122-634

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 397. 140

THE HELENA BRIDGE COMPANY, APPELLANT,

vs.

Z. KING AND SON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

FILED OCTOBER 11, 1883.

SUPREME COURT OF THE UNITED STATES.

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1 THE UNITED STATES OF AMERICA,
Eastern District of Texas:

To the judge of the circuit court of the United States holding sessions at the city of Galveston, in county of Galveston, in the State of Texas, sitting in chancery:

Your orators, Z. King and John King, residents of the city of Cleveland, in the State of Ohio, and citizens of the State of Ohio, trading and doing business as partners under the firm name of Z. King & Son, bring this bill, humbly complaining of the Helena Bridge Company and Samuel A. Oliver, — beg leave to state and make known to your honor that heretofore, to wit, on or about the — day of ——, 187–, your orators entered into a contract with the Helena Bridge Company, a private corporation situated and doing business under the above name and style in the county of Karnes, in the State of Texas, said corporation being a citizen of the State of Texas and county of Karnes aforesaid, said corporation being rep-
2 resented by Thomas Ruckman as president thereof, and L. W. Burris, H. H. McLean, John Ruckman, and T. K. Bailey as directors, all citizens of the State of Texas and residents of Karnes county, Texas, for the purpose of building a bridge for said Helena Bridge Company.

The contract between your orators and said Helena Bridge Company underwent various and sundry modifications and changes between the commencement of said work and its completion, which modifications and changes it is not deemed necessary here to notice.

Your orators further state that said bridge was built across the San Antonio river, near the town of Helena, in said county of Karnes, to the entire satisfaction of said Helena Bridge Company, and said bridge was received by said Helena Bridge Company on or about the — day of ——, 18—. Your orators further state that after the completion of said bridge by your orators and its reception by said Helena Bridge Company said Helena Bridge Company made and delivered to Thomas Ruckman five promissory notes
3 for the sum of fourteen hundred dollars each, all drawing ten per cent. interest per annum from date until paid.

The first of said notes falling due is due and payable one year after date, the second at fifteen months, the third at eighteen months, the fourth at twenty-one months, and the fifth and last at twenty-four months after date, and all made payable at the First National Bank in the city of San Antonio, and are and were on the day of their date each and all endorsed by Thomas Ruckman on the backs thereof as follows, to wit: "Thomas Ruckman," and each and all delivered by said Ruckman to your orators on the day of their dates in satisfaction and payment for said bridge so built across the San Antonio river.

That it was the design and intent of said Helena Bridge Company, in making said notes in manner and form as aforesaid, that they were to be so endorsed by said Ruckman and delivered to your orators in payment for said bridge.

Your orators beg leave further to state that on the said 6th
4 day of March, A. D. 1876, said Helena Bridge Company, through its president and board of directors, said company acting through and by its said president, Thomas Ruckman, made and delivered to Samuel A. Oliver, a resident of the city of Austin, in the State of Texas, and a citizen of said State of Texas, its writing obligatory, commonly called a mortgage or deed of trust, whereby said Helena Bridge Company mortgaged and conveyed to said Oliver, for the uses and purposes aforesaid, all the right, title, and interest which the said Helena Bridge Company has in and to the new three-span iron bridge of Z. King & Son's patent now being constructed across the San Antonio river near the town of Helena, in Karnes county, Texas, together with all and singular the rights, members, hereditaments, franchises, ways, and appurtenances to said bridge belonging or in any wise incident thereto or connected therewith."

That said writing obligatory was so made and delivered to said Oliver for the purpose aforesaid to secure to your orators the payment of said five promissory notes, which said five promissory
5 notes were made and delivered aforesaid for the purpose of securing the payment to your orators of the final sum agreed by and between your orators and said Helena Bridge Company to be due to your orators for building and erecting said bridge.

Said mortgage or deed of trust is signed and made by said Helena Bridge Company by and through its president, Thomas Ruckman, who signs "Thomas Ruckman," by and under directions of its board of directors.

Your orators further allege and show that each and all of said five promissory notes are long since due, together with accrued interest thereon, amounting in the aggregate to the sum of nine thousand and forty-one dollars due and owing to your orators on said promissory notes and mortgage from said Helena Bridge Company.

Your orators further allege that said Oliver, to whom said deed of mortgage was made, now declines to execute the same.

Your orators beg leave to state further that each and all of said promissory notes are, together with accrued interest, long since due and wholly unpaid; that said Helena Bridge Company and
6 said Thomas Ruckman, who signs Thomas Ruckman, have neglected and failed and refused to pay said notes, or any part thereof, although often requested thereunto; that said Helena Bridge Company is a regularly chartered corporation under the laws of the State of Texas, with power of suing and being sued.

In view of the premises aforesaid yonr orators pray that said Helena Bridge Company, through its officers, to wit, Thomas Ruckman, president; L. W. Burris, H. H. McLean, John Ruckman, and Y. K. Bailey, be cited by subpœna to answer this bill under oath, and after a full and fair hearing thereof your orators have a decree ordering a sale of said iron bridge at Helena to satisfy said decree, and should there remain anything due to your orators after said property so mortgaged is exhausted, then for execution against said corporation — any balance so remaining due for their reasonable

costs and for general relief, and as in duty bound your orators will ever pray.

WHEELER & RHODES,
Solicitors for Complainants.

Endorsed: No. 3. Z. King & Son *vs.* The Helena Bridge
7 Company and Samuel A. Oliver. Complainants' bill. Filed March 3, 1879. C. Dart, clerk. Filed July 24th, 1880. W. C. Robards, clerk, by W. McMaster, dep. Wheeler & Rhodes, solicitors for complainants.

Motion to Transfer.

KING
vs.
THE HELENA BRIDGE CO. } No. —. In Chancery.

Now on this day comes the complainant, by his solicitors, and makes known to the honorable circuit court that since the filing of his bill of complaint that the Congress of the United States has invested the San Antonio branch of the western district of Texas, to which branch of said western district of Texas the subpœnas in this cause are properly returnable, the respondents all residing within that part of the western district made returnable as a process to San Antonio, with circuit court powers; wherefore complainant prays that this cause be transferred to the San Antonio branch of the western district of Texas.

WHEELER & RHODES,
Solicitors for Complainants.

8 Endorsed: No. 135. Equity. Z. King & Son *vs.* The Helena Bridge Co. & Sam'l A. Oliver. Motion of complainant to transfer cause to western district of Texas, at San Antonio. Filed Dec. 8th, 1879. C. Dart, clerk. Filed July 24, 1880. W. C. Robards, clerk, by W. McMaster, dep'y.

Copy of Entry from Motion Docket.

KING
vs.
THE HELENA BRIDGE COMPANY. } No. —.

Motion to remove cause to San Antonio branch of western district of Texas.

Entry from Motion Docket.

In the Circuit Court of the United States for the Eastern District of Texas.

From the motion docket of said court, Dec. 8th, 1879.

Z. KING & SON, Compl's,
vs.
THE HELENA BRIDGE COMPANY and SAMUEL A. OLIVER. } Equity. No. 135.

This day came the complainants, by their solicitors, and filed

herein their motion to remove this cause to the western district of Texas, at San Antonio.

Entered Dec. 8th, 1879.

9 Attest: C. DART,
Clerk U. S. Circ't Court, E. D. T., G.

Certificate.

I, C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, in the fifth circuit and district aforesaid, do hereby certify the foregoing to be a true and correct copy of an entry from the motion docket of said court in cause No. 135 on the equity docket of said court, entitled Z. King & Son, complainants, *vs.* The Helena Bridge Company and Samuel A. Oliver, defendants, as the same now appears of record in my office.

To certify which, witness my hand and the seal of said court, at Galveston, in said district, this the 26th day of January, A. D. 1880.

[L. S.] C. DART,
Clerk U. S. Circuit Court, E. D. T., at Galveston.

Endorsed: No. 135. In equity. Z. King & Son *vs.* The Helena Bridge Co., Sam'l A. Oliver. Copy of entry from motion docket. Filed July 24, 1880. W. C. Robards, clerk, by W. McMaster, deputy.

10 *Copy of Order of Transfer.*

In the Circuit Court of the United States for the Eastern District of Texas, holding sessions at Galveston.

From the minutes of said court. Nov. term, 1879.

Z. KING & SON
vs.
THE HELENA BRIDGE COMPANY and SAMUEL A. OLIVER. } No. 135. Equity.

JAN'Y 7TH, 1880.

This day came the complainants, by their solicitors, Wheeler and Rhodes, and moved the court that this cause be transferred to the circuit court of the United States for the western district of Texas, holding sessions at San Antonio, in said district; and it appearing to the court that the defendants are residents of the division of said district returnable to San Antonio, and under the law either party has the right to have the said cause removed:

Wherefore it is ordered that this cause be transferred to the circuit court of the United States for the western district of Texas, holding sessions at San Antonio, and the clerk of this court is hereby required to cause the original files in said cause to be trans-
11 mitted to the clerk of the said circuit court at San Antonio, together with a copy of all journal entries in the cause, and for the purpose of such transmission may deliver the said original files and copy to the solicitors of the complainants, taking their receipt therefor, and as to the cause this court will proceed no further therein.

Certificate.

I, C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, in the fifth circuit and district aforesaid, do hereby certify the foregoing to be a true and correct copy of an order made and entered on the 7th day of January, 1880 (the same being all of the journal entries), in cause No. 135 on the equity docket of said court, entitled Z. King & Son, complainants, *vs.* The Helena Bridge Company and Samuel A. Oliver, defendants, as the same now appears of record on the minutes of said court in my office.

To certify which, witness my hand and the seal of said court, at Galveston, in said district, this the 26th day of January, A. D. 1880.

[L. S.]

C. DART,
Clerk U. S. Circuit Court, E. D. T., at Galveston.

12 Endorsed: No. 135. Equity. Z. King & Son *vs.* The Helena Bridge Co. — Samuel A. Oliver. Copy of order of transfer. Filed July 24, 1880. W. C. Robards, clerk, by W. McMaster, dep'y.

Certified List of Papers Transferred.

In the Circuit Court of the United States for the Eastern District of Texas, holding sessions at Galveston.

Z. KING & SON, Complainants,
vs.
THE HELENA BRIDGE COMPANY & SAMUEL A. OLIVER, Defendants.
} Equity. No. 135.

List of papers in said cause transferred to San Antonio:

1. Complainants' bill of complaint filed March 3d, 1879.
2. Motion of complainants to transfer cause to western district of Texas, at San Antonio, filed Dec. 8th, 1879.
3. Copy of order of transfer from the minutes.
4. Copy of entry from the motion docket.

I certify the foregoing to be a true and correct list of all the papers in said cause.

Attest:

C. DART,
Clerk U. S. Circ't Court, E. D. T., G.

Galveston, Texas, Jan'y 26, 1880.

13 Endorsed: No. 135. Equity. Z. King & Son *vs.* The Helena Bridge Company and Sam'l A. Oliver. Certified list of papers transferred. Filed July 24, 1880. W. C. Robards, clerk, by W. McMaster, dep'y.

THE UNITED STATES OF AMERICA, *Eastern District of Texas:*

To the judge of the circuit court of the United States, holding sessions at the city of Galveston, in the county of Galveston, in the State of Texas, sitting in chancery:

Your orators, Z. King and John King, residents of the city of Cleveland, in the State of Ohio, and citizens of the State of Ohio, trading and doing business as partners under the firm name of Z. King & Son, bring this bill, humbly complaining of the Helena Bridge Company and Samuel A. Oliver, — beg leave to state and make known to your honor that heretofore, to wit, on or about the — day of ——, 187–, your orators entered into a contract with the Helena Bridge Company, a private corporation situated and doing business under the above name and style in the county of Karnes, in the State of Texas, said corporation being a citizen of the State of Texas and county of Karnes aforesaid, said corporation being
14 represented by Thomas Rukman, as president thereof, and L. W. Burris, H. H. McLean, John Ruckman, and Y. K. Bailey, as directors, all citizens of the State of Texas and residents of Karnes county, Texas, for the purpose of building a bridge for said Helena Bridge Company.

The contract between your orators and said Helena Bridge Company underwent various and sundry modifications and changes between the commencement of said work and its completion, which modifications and changes it is not deemed necessary here to notice.

Your orators further state that said bridge was built across the San Antonio river, near the town of Helena, in said county of Karnes, to the entire satisfaction of said Helena Bridge Company, and said bridge was received by said Helena Bridge Company on or about the — day of ——, 18—.

Your orators further state that after the completion of said bridge by your orators and its reception by said Helena Bridge Company said Helena Bridge Company made and delivered to Thomas Ruckman five promissory notes for the sum of fourteen hundred dollars each, all drawing ten per cent. interest per annum from date until paid. The first of said notes falling due is due and
15 payable one year after date, the second at fifteen months, the third at eighteen months, the fourth at twenty-one months, and the fifth and last at twenty-four months after date, and all made payable at the First National Bank in the city of San Antonio, and are and were on the day of their date each and all endorsed by Thomas Ruckman on the backs thereof as follows, to wit, "Thomas Ruckman," and each and all delivered by said Ruckman to your orators on the day of their dates in satisfaction and payment for said bridge so built across the San Antonio river; that it was the design and intent of said Helena Bridge Company, in making said notes in manner and form as aforesaid, that they were to be so endorsed by said Ruckman and delivered to your orators in payment for said bridge.

Your orators beg leave further to state that on the said 6 day of March, A. D. 1876, said Helena Bridge Company, through its president and board of directors, said company acting through and by its said president Thomas Ruckman, made and delivered to Samuel A. Oliver, a resident of the city of Austin, in the State of Texas,
16 and a citizen of said State of Texas, its writing obligatory, commonly called a mortgage or deed of trust, whereby said Helena Bridge Company mortgaged and conveyed to said Oliver, for the use and purpose aforesaid, all the right, title, and interest which the said Helena Bridge Company has in and to the new three-span iron bridge of Z. King & Son's patent, now being constructed across the San Antonio river near the town of Helena, in Karnes county, Texas, together with all and singular the rights, members, hereditaments, franchises, ways, and appurtenances to said bridge belonging or in any wise incident thereto or connected therewith.

That said writing obligatory was so made and delivered to said Oliver for the purpose aforesaid, to secure to your orators the payment of said five promissary notes, which said five promissory notes were made and delivered aforesaid, for the purpose of securing the payment to your orators of the final sum agreed by and between your orators and said Helena Bridge Company to be due to your orators for building and erecting said bridge.

17 Said mortgage or deed of trust is signed and made by said Helena Bridge Company by and through its president, Thomas Ruckman, who signs Thos. Ruckman, by and under directions of its board of directors.

Your orators further allege and show that each and all of said five promissory notes are long since due, together with accrued interest thereon amounting in the aggregate to the sum of nine thousand and forty-one dollars, due and owing to your orators on said promissory notes and mortgage from said Helena Bridge Company.

Your orators further allege that said Oliver, to whom said deed of mortgage — made, now declines to execute the same.

Your orators beg leave to state further that each and all of said promissory notes are, together with accrued interest, long since due and wholly unpaid; that said Helena Bridge Company and said Thomas Ruckman, who signs Thos. Ruckman, have neglected and failed and refused to pay said notes or any part thereof, although often requested thereunto; that said Helena Bridge Company is a regularly chartered corporation under the laws of the State of Texas, with power of sueing and being sued.

18 In view of the premises aforesaid your orators pray that said Helena Bridge Company—through its officers, to wit: Thomas Ruckman, president; L. W. Burris, H. H. McLean, John Ruckman, and Y. K. Bailey—be cited — subpœna to answer this bill under oath, and after a full and fair hearing thereof your orators have a decree ordering a sale of said iron bridge at Helena to satisfy said decree; and should there remain anything due to your orators after said property so mortgaged is exhausted, then for execution against said corporation any balance so remaining due for

their reasonable costs and for general relief, and as in duty bound your orators will ever pray.

WHEELER & RHODES,
Solicitors for Complainant.

A true copy of the original now on file in my office.
Given under my hand and the seal of the circuit court, the 4th day of September, A. D. 1880.

W. C. ROBARDS, *Clerk.*
By W. McMASTER, *Dep'y.*

United States Circuit Court, sitting in Chancery at San Antonio.

19 Z. KING & SON *vs.* HELENA BRIDGE COMPANY.

To the honorable the circuit judge:

Your orators, the complainants in the original bill filed in the above named and styled cause, humbly praying, would respectfully represent that at the filing of the original bill in this cause, which was done at Galveston just at or about the time of the change of district in the State of Texas by the Congress of the United States, and when it was in doubt as to what branch of said court causes filed against persons residing in the county of Karnes would be returnable, said original bill was drawn and prepared by Ireland and Burges, solicitors, residing at Seguin, Texas, and sent to Messrs. Rhodes & Wheeler at Galveston, where Mr. S. A. Oliver, the agent in Texas of complainant, was then supposed to be.

That Mr. Oliver did not make his appearance there until it became necessary for the presentation of complainants' rights to file the bill.

That complainants themselves were at that time in the State of Ohio, were then and now reside-, and of which State they were and are citizens.

20 That in consequence of these facts the original bill filed in this cause was filed without being sworn to, and your orators, humbly praying, now ask permission to swear to said original bill and this amendment, and that the same be filed as an amendment to the original bill.

Complainants say that the facts set up in this amendment and the matters set out in said original bill are true.

Complainants further pray an enlargement of the time within which to take deposition.

They say that at the May term of the court an order was entered by your honorable court in this cause allowing parties until the first Monday in August, 1881, to take testimony.

Complainants state that with all the diligence they have been able to use they have not been able to take all the testimony in the time prescribed in said order, and that there is yet important and valuable testimony to take.

That the enlargement of the time to the 20th day of September will be sufficient, and that the granting of this prayer will not delay the hearing in this cause.

A copy of the original bill is hereto attached and made a
21 part hereof.

As in duty bound they will ever pray, &c.

WHEELER & RHODES,
IRELAND & BURGES,
Sol. for Complainants.

UNITED STATES OF AMERICA,
Eastern District of Texas, Houston, Harris County:

This day personally appeared before the undersigned authority S. A. Oliver, to me known, who states, on oath, that he is now, and was at and before the filing of the original bill in the case No. 3 in chancery of Z. King & Son *vs.* The Helena Bridge Company, the agent for the complainants in the State of Texas, and that of his personal knowledge the facts set out in the original bill filed in this case are true, and believes, upon information, that the facts set out in the amendment hereto attached are true.

S. A. OLIVER.

Sworn to and subscribed before me this 26th day of August, A. D. 1881.

Witness my hand and official seal, day and date above written.

[L. S.] A. K. TAYLOR,
U. S. Commissioner, Eastern District of Texas, at Houston, Texas.

Endorsed: No. 3. Z. King & Son *vs.* Helena Bridge Co. Filed Oct 1, 1881. W. C. Robards, clerk.

22 *Subpœna in Chancery.*

U. S., W. D. T.

No. 3. The President of the United States to Thomas Ruckman, president of the Helena Bridge Company of Karnes county, Texas, Greeting:

You are hereby commanded that, laying all matters aside, you cause an appearance to be entered for you before the honorable the United States circuit court for the western district of Texas, at San Antonio, Texas, in chancery sitting, on or before the first Monday in September, A. D. 1880, then and there to appear and answer the exigency of a certain bill of complaint of Z. King and John King, trading and doing business under the firm-name of Z. King & Son, and residents of the city of Cleveland, in the State of Ohio, in the United States of America, exhibited and filed in the office of said court on 24th day of July, 1880, against the Helena Bridge Company of Karnes county, Texas, through its officers, Thomas Ruckman, president; L. W. Burris, H. N. McLean, John Ruckman, and T. R. Bailey, for amount due for building the bridge, and to do further and to receive what shall then and there be considered in that behalf, and this you are not to omit under the penalty of two
23 hundred dollars.

Witness the Honorable Morrison R. Waite, Chief Justice

of the Supreme Court of the United States, and the seal of said circuit court, hereunto affixed, at San Antonio, this 5th day of August, 1880.

[L. S.]

W. C. ROBARDS,
Clerk U. S. Circuit Court, W. D. T.
By W. McMASTER, *Dep'y.*

The defendant, Thomas Ruckman, president, &c., is required to enter his appearance in the above suit on or before the first Monday in September, 1880; otherwise the bill of complaint against him will be taken *pro confesso*.

W. C. ROBARDS, *Clerk.*
By WM. McMASTER, *Dep'y.*

Endorsed: No. 3. Subpœna in chancery. U. S. circuit court, western district of Texas, at San Antonio. To Z. King & Son *vs.* Helena Bridge Company and Samuel A. Oliver. Issued 5th day of August, 1880. Returnable 1st Monday in September, 1880. W. C. Robards, clerk, by W. McMaster, dep'y.

Marshal's Return.

Rec'd in this office this 5th day of August, 1880, and executed on the 10th day of August, 1880, by delivering to the within-
24 named defendant, Thomas Ruckman, president, &c., in person, a true copy of this subpœna.

STILLWELL H. RUSSELL,
U. S. Marshal,
By JNO. A. SETTLE, *Deputy.*

Service, $2.00.

N. B.—If the defendant cannot be found this subpœna can be served by leaving a copy hereof at the dwelling-house or usual abode of the defendant, or of some free white person who is a member or a resident of the family; and if served in this way the marshal must make his return accordingly.

Filed Aug. 12, 1880.

W. C. ROBARDS, *Clerk.*

No. 3.

Subpœna in Chancery.

The President of the United States to John Ruckman, Greeting:

You are hereby commanded that, laying all matters aside, you cause an appearance to be entered for you before the honorable the United States circuit court for the western district of Texas, at San Antonio, in chancery sitting, on or before the first Monday in Sepber, A. D. 1880, then and there to appear and answer the exigency of a bill of complaint of Z. King & John King, trading under
25 the firm-name of Z. King & Son, and residents of the city of Cleveland, in the State of Ohio, in the United States of America, exhibited and filed in the office of said court on the 24 day of

July, 1880, against the Helena Bridge Company of Karnes county, Texas, through its officers, Thomas Ruckman, president, L. W. Burris, H. H. McLane, John Ruckman, and T. K. Bailey, for amount due for building the bridge, and to do further and receive what shall then and there be considered in that behalf, and this you are not to omit under the penalty of two hundred dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court hereunto affixed, at San Antonio, this 5th day of August, 1880.

[L. S.]

W. C. ROBARDS,
Clerk U. S. Circuit Court, W. D. T.,
By W. McMASTER, *Dep'y.*

The defendant, John Ruckman, is required to enter his appearance in the above suit on or before the first Monday in September, 1880; otherwise the bill of complaint filed against him will be taken *pro confesso*.

W. C. ROBARDS, *Clerk*,
By W. McMASTER, *Dep'y.*

26 Endorsed: No. 3. Subpœna in chancery. U. S. circuit court, western district of Texas, at San Antonio. Z. King & Son *vs.* Helena Bridge Company & Samuel A. Oliver. Issued 5th August, 1880; returnable first Monday in Sept., 1880. W. C. Robards, clerk, by W. McMaster, dep'y.

Marshal's Return.

Received in this office this 5th day of August, 1880, and executed on the 10th day of August, 1880, by delivering to the within-named defendant, John Ruckman, in person, a true copy of this subpœna.

STILLWELL H. RUSSELL,
U. S. Marshal,
By JOHN A. SETTLE, *Deputy.*

Service, $2.00.

N. B.—If the defendant cannot be found this subpœna can be served by leaving a copy hereof at the dwelling house or usual abode of the defendant, or of some free white person who is a member or resident of the family; and if served in this way the marshal must make his return accordingly.

Filed Aug. 12th, 1880.

W. C. ROBARDS, *Clerk.*

No. 3. Subpœna in Chancery.

The President of the United States to L. W. Burris, Greeting:

27 You are hereby commanded that, laying all matters aside, you cause an appearance to be entered for you before the honorable the United States circuit court for the western district of Texas, at San Antonio, in chancery sitting, on or before the first

Monday in September, A. D. 1880, then and there to appear and answer the exigency of a certain bill of complaint of Z. King & John King, trading and doing business under the firm — of Z. King & Son, and residents of the city of Cleveland, in the State of Ohio, in the United States of America, exhibited and filed in the office of said court on — 24 day of July, 1880, against the Helena Bridge Company, of Karnes county, Texas, through its officers, Thomas Ruckman, president; L. W. Burris, H. H. McLane, John Ruckman, and T. K. Bailey, for amount due for the building the bridge, and to do further and receive what shall then and there be considered in that behalf; and this you are not to omit, under the penalty of two hundred dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said cir-
28 cuit court hereunto affixed, at San Antonio, this 5th day of August, 1880.

[L. S.]

W. C. ROBARDS,
Clerk U. S. Circuit Court, W. D. T.
By W. McMASTER, *Dep'y.*

The defendant, L. W. Burris, is required to enter his appearance in the above suit on or before the first Monday in September, 1880; otherwise the bill of complaint filed against him will be taken *pro confesso.*

W. C. ROBARDS, *Clerk,*
By W. McMASTER, *Dep.*

Endorsed: No. 3. Subpœna in chancery. U. S. circuit court, western district of Texas, at San Antonio. Z. King & Son *vs.* Helena Bridge Company & Samuel A. Oliver. Issued 5th August, 1880. Returnable 1st Monday in Sept., 1880. W. C. Robards, clerk, by W. McMaster, dep. Filed Aug. 12th, 1880. W. C. Robards, clerk.

Marshal's Return.

Received this writ in office 5th August, 1880, and on the 10th day of August, 1880, I executed the same by leaving a copy of the same at the dwelling house of L. W. Burris with Mrs. L. W. Burris in person; the defendant, L. W. Burris, not found.

STILLWELL H. RUSSELL,
U. S. Marshal, Western District, Texas,
By JNO. A. SETTLE, *Deputy.*

29 N. B.—If the defendant cannot be found this subpœna can be served by leaving a copy hereof at the dwelling-house of or usual abode of the defendant or of some free white person who is a member or a resident of the family; and if served in this way the marshal must make his return accordingly.

No. 3. Subpœna in Chancery.

The President of the United States to H. H. McLane, Greeting:

You are hereby commanded that, laying all matters aside, you

cause an appearance to be entered for you before the honorable the United States circuit court for the western district of Texas at San Antonio, in chancery sitting, on or before the first Monday in September, A. D. 1880, then and there to appear and answer the exigency of a certain bill of complaint of Z. King and John King, trading under the firm-name of Z. King & Son, and residents of the city of Cleveland, in the State of Ohio, in the United States of America, exhibited and filed in the office of said court on 24th day of July, 1880, against the Helena Bridge Company of Karnes county, Texas, through its officers, Thomas Ruckman, president; L. W. Burris, H. H. McLean, John Ruckman, and T. K. Bailey for amount due for building the bridge, and to do further and receive what shall then and there be considered in that behalf; and this you are not to omit under the penalty of two hundred dollars.

30

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court hereunto affixed, at San Antonio, this 5th day of August, 1880.

[L. S.]

W. C. ROBARDS,
Clerk U. S. Circuit Court, W. D. T.,
By W. McMASTER, *Dep.*

The defendant, H. H. McLane, is required to enter his appearance in the above suit on or before the first Monday in September, 1880; otherwise the bill of complaint filed against him will be taken *pro confesso*.

W. C. ROBARDS, *Clerk.*
By W. McMASTER, *Dep.*

Endorsed: No. 3. Supœna in chancery. U. S. circuit court western district of Texas, at San Antonio. Z. King & Son *vs.* Helena Bridge Company and Samuel A. Oliver. Issued 5th August, 1880. Returnable 1st Monday Sept., 1880. W. C. Robards, clerk, by W. McMaster, dep. Filed Aug. 12, 1880. W. C. Robards, clerk.

31

Marshal's Return.

Received this writ, in office, August 5th, 1880, and on the 14th August, 1880, I executed the same by leaving a copy of this writ at the dwelling-house of the defendant, in San Antonio, Texas, with his wife, Mrs. H. H. McLean, the defendant not being in the State.

STILLWELL H. RUSSELL,
United States Marshal, Western District of Texas,
By JNO. A. SETTLE, *Deputy.*

N. B.—If the defendant cannot be found this subpœna can be served by leaving a copy hereof at the dwelling-house or usual abode of the defendant or of some free white person who is a member or a resident of the family, and if served in this way the marshal must make his return accordingly.

No. 3. Subpœna in Chancery.

The President of the United States to T. K. Bailey, Greeting:

You are hereby commanded that, laying all matters aside, you cause an appearance to be entered for you before the honor-
32 able the United States circuit court for the western district of Texas, at San Antonio, in chancery sitting, on or before the first Monday in September, A. D. 1880, then and there to appear and answer the exigency of a certain bill of complaint of Z. King and John King, trading under the firm-name of Z. King & Son, and residents of the city of Cleveland, in the State of Ohio, in the United States of America, exhibited and filed in the office of said court on 24 day of July, 1880, against the Helena Bridge Company of Karnes county, Texas, through its officers, Thomas Buckman, president; L. W. Burris, H. H. McLane, John Ruckman, and T. K. Bailey, for amount due for building the bridge, and to do further and receive what shall then and there be considered in that behalf, and this you are not to omit under the penalty of two hundred dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court hereunto affixed, at San Antonio, this 5th day of August, 1880.

[L. S.] W. C. ROBARDS,
Clerk U. S. Circuit Court, W. D. T.,
33 By WM. McMASTER,
Deputy.

The defendant, T. K. Bailey, is required to enter his appearance in the above suit on or before the first Monday in September, 1880; otherwise, the bill of complaint filed against him will be taken *pro confesso.*

W. C. ROBARDS, *Clerk.*
By WM. MASTER, *Dep'y.*

Endorsed: No. 3. Subpœna in chancery. U. S. circuit court, western district of Texas at San Antonio. Z. King & Son *vs.* Helena Bridge Company and Samuel A. Oliver. Issued 5th August, 1880. Returnable 1st Monday in Sept., 1880. W. C. Robards, clerk, by W. McMaster, dep. Original for T. K. Bailey — Co. Received in office Aug. 5th, 1880, and executed on the 10th August, 1880, by delivering to the within-named defendant, T. K. Bailey, in person a true copy of this subpœna. Stillwell H. Russell, U. S. marshal, western district of Texas, by Jno. A. Settle, deputy. Filed Aug. 12th, 1880. W. C. Robards, clerk.

Answer of Oliver.

United States Circuit Court, San Antonio. In Chancery.

Z. KING & SON.
vs.
HELENA BRIDGE CO. } No. 3.

Now, on this day comes the respondent, S. A. Oliver, and

34 answering complainants' bill filed herein, so far as he is advised that it is necessary to be answerd, says that he admits all the material allegations made and set out in said bill by complainants filed herein.

He says that he declined to execute said trust and to sell said property mentioned in said deed of trust set out and described in said bill, because he understood that there was some difference of opinion between the complainants and his co-respondents as to the amount actually due to said complainants.

And now, having fully answered, he prays to be dismissed with his costs, and, as in duty bound, he will ever pray.

S. A. OLIVER,
In propria persona.

Endorsed: No. 3. Z. King & Son *vs.* Helena Bridge Co. Answer of Oliver. Filed Sept. 2, 1880. W. C. Robards, clerk, by W. McMaster, deputy.

35 *Original Answer of the Bridge Company.*

Z. KING & SON
vs.
THE HELENA BRIDGE CO., of Karnes County. } No. 3.

SEPT. 6TH, 1880.

On this day came the defendants, by their solicitors, Mess. Howard and Harrison, and entered their appearance; therefore this cause is continued until the next rule day, the first Monday in October, A. D. 1880.

W. C. ROBARDS, *Clerk.*

[Endorsed:] No. 3. In chancery. Z. King & Son *vs.* The Helena Bridge Company and S. A. Oliver. Answer of the Bridge Company, by H. H. McLane. Howard and Harrison, solicitors.

Circuit Court of the United States for the Western District of Texas, at San Antonio. In Chancery.

Z. KING & SON
vs.
THE HELENA BRIDGE CO. } No. 3.

The defendant herein, The Helena Bridge Company, by Hiram H. McLane, by protestation, not confessing or acknowledging all or any of the matters and things in complainants' bill of complaint to be true in such manner and form as the same are thereby
36 and therein set forth and alleged, as to so much of said bill as seeks any discovery of the alleged deed in trust, or any relief thereon, or on said promissory notes, doth demur, and for cause of demurrer says that it appears by said bill that the same is vague and uncertain, not setting up said deed in trust or notes with any sufficient certainty of description; and, further, said bill praying for

relief, discovery, and answer under oath is not itself verified or accompanied by any affidavit.

Wherefore, and for divers other good causes of demurrer in said bill contained, this defendant does demur, and prays judgment of this honorable court whether he shall be compelled to make any further or other answer to said bill, and that the same be dismissed.

And this defendant, not waiving his said demurrer, but relying thereon, and saving and reserving unto himself all benefit and advantage of exception to the many errors, uncertainties, and other imperfections in the residue of said bill contained, for answer says that complainants are not entitled to the relief prayed for in said bill, because, he says, that said supposed deed in trust and promissory notes received thereby are not the acts and deeds of the de-
37 fendant, The Helena Bridge Company, for the reasons following:

Defendant says that previous to the 13th day of September, A. D. 1875, and when the subscriptions to said bridge were procured, the same was done by said Z. King & Son and said H. H. McLane, who procured the same to be made and signed, and it was then well understood and agreed between said Z. King and Son and the signers to said subscription, among whom was said H. H. McLane, that said bridge was to be built for and was to cost only the sum of sixteen thousand dollars, one-half of which, eight thousand dollars, was to be carried by said Z. King & Son, and they were to own that amount in the stock of said company, for which they were to pay in material furnished and in building said bridge.

Defendant further says that on the 13th day of September, A. D. 1875, complainants, Z. King and Son, acting through their agent and attorney-in-fact, S. A. Oliver, and the Helena Bridge Company, acting through its president, Thomas Ruckman, and its secretary, T. K. Bailey, by authorization of its board of directors, as alleged, entered into an agreement in writing by which said Z. King and Son contracted to build said bridge at Helena, Texas, for the sum
38 of twenty-one thousand dollars ($21,000), and to complete the same by the first day of January, A. D. 1876, and to take in part payment thereof in the stock of said company ten thousand dollars as a part of said twenty-one thousand dollars.

A copy of said agreement is herewith filed (in substance), marked "Exhibit A to answer."

To which said contract the said H. H. McLane, as one of the subscribers to said stock, refused to assent, but denied its validity or force as to him.

Defendant further says that afterwards said Z. King & Son, claiming that the five thousand dollars stipulated to be paid to them in said contract was due, undertook and agreed to take the subscriptions to said bridge and to collect the same, and it is alleged on information and belief that they and their agents did collect a large part thereof, and, among others, said H. H. McLane, settled with them for his subscription, as appears by a contract by which said Z. King & Son, on the second day of March, A. D. 1876, made and entered into a contract with said H. H. McLane, by which they

guaranteed and promised to have issued to him in the paid-
39 up stock of said company the sum of two thousand dollars. Said contract is herewith filed as a part of this answer, marked "Exhibit B to answer."

Defendant, further answering, says that afterwards, on the 6th day of March, A. D. 1876, the said bridge being still incomplete and unfinished, and when very little, if any, work had been done thereon, the said Z. King & Son, stockholders in said company as aforesaid, and Thomas Ruckman, a stockholder and president of said company, entered into a pretended agreement with each other by which said Ruckman was to build said bridge. A copy in substance of said agreement is herewith filed as a part of this answer, marked "Exhibit C to answer."

Defendant charges that said contract was a private agreement between said Z. King & Son and said Thomas Ruckman; that it was unknown to and unauthorized by the board of directors of said company, as the affiant hereto is informed and believes.

And afterwards on said last-named day, as defendant charges, to escape and avoid their liabilities on said contract, marked "Exhibit A," and to carry out said last-named private contract, marked "Exhibit C," by which said Ruckman assumed said liabilities,
40 the said Z. King & Son, combining with said Thomas Ruckman (said King & Son acting through James A. King and S. A. Oliver), procured the said promissory notes and deed in trust to secure the same, set up in the complainant's bill to be made and delivered, and noted on the minute book of said corporation in substance as follows:

"At a meeting of the board of directors, called by the president, of the Helena Bridge Co., held at Helena on the 6th day of March, 1876—present: Thos. Ruckman, president; John Ruckman, treas.; & T. K. Bailey, sec'y—

"It was resolved that in order to enable the company to raise funds for the completion of the bridge that the company execute notes to the amount of seven thousand dollars, payable to Thos. Ruckman, bearing interest at the rate of 10% per annum, to be paid in instalments, to wit:

"One note for	$1,400.00	*dollars* in	12	months.
"	1,400.00	"	15	"
"	1,400.00	"	18	"
"	1,400.00	"	21	"
"	1,400.00	"	24	"

"And it was further ordered that said notes be secured by deed of trust on the bridge. All of which was accordingly done."

41 Defendant charges that on said 6th day of March, 1876, there was no lawful meeting of said board of directors; that no notice of said meeting was given to the directors, as affiant hereto is informed and believes—certainly none to said H. H. McLane; that none of said directors were present, as he is informed, except those stated in said minutes.

Defendant says that the charter of said Bridge Company in section 5 thereof requires the five directors to transact business, a copy of which charter is herewith filed as a part of this answer, marked "Exhibit D to answer."

Defendant further says that although a set of by-laws were printed, as proposed by laws for said company, none were ever adopted by the company.

Defendant further says that of said charter and of all the said proceedings on said 6th day of March, 1876, the said complainants had due notice, and that said James A. King and S. A. Oliver were then and there present, and procured the same to be done in manner and form aforesaid.

42 Defendant avers that in said private contract, marked "Exhibit C," with Z. King & Son the interest of Thomas Ruckman was opposed to the interest of the defendant, The Helena Bridge Company; that it is an attempt on the part of the complainants, Z. King and Son, to escape their liabilities on the contract, marked "Exhibit A," with said company for its performance or breach; that the effect of said private contract is to do this, and, further, to sacrifice at public sale the said bridge, thereby rendering the paid-up stock of said company in the hands of its owners worthless and said company bankrupt.

For all which and other reasons apparent defendant charges that said private contract between complainants and Thomas Ruckman, marked "Exhibit C," as well as said deed in trust with the promissory notes sought to be secured thereby are a fraud upon said defendant company and the claimant of its assets, are contrary to equity and justice, & are void, as defendant is advised.

Defendant, further answering, says that it is not true, as alleged in said bill of complainant, that said deed in trust and promissory

43 notes were authorized by the board of directors of the Helena Bridge Company; that it is not true, as therein alleged, that the consideration for said notes was the building and completion of said bridge by the complainants and its reception by the defendant company. On the contrary, at the date of said notes and deed, said bridge was not completed, nor had it been received, but its actual construction had only just been commenced, if at all, and said notes were without any consideration then passing from said Z. King & Son to defendant, the Bridge Company, but were based upon and made to carry out said private contract between Z. King & Son and Thomas Ruckman.

Nor has said bridge ever to this day, been received and accepted by said Bridge Company.

Nor were said notes given, as stated in said pretended minutes of the company of March 6th, 1876, to raise funds for the completion of the bridge, but were made and endorsed to Z. King & Son to settle under said private contract for claims made by them for material already furnished for said bridge, and to pay for which, at least in part, — they had already made collections of subscribers,

44 as before shown, and continued so to do by their agents after the date of said notes, and also under said agreement to pay

for the transfer of their stock to said Ruckman, he agreeing at the same time to build said bridge in their place and stead.

Defendant, further answering, alleges on information and belief that, except and apart from said stock agreed as aforesaid to be received in payment by said complainants (if the same should be decreed to them, or any part thereof), there is not due to them from the defendant, the Helena Bridge Company, any amount of money whatever.

And, further answering, this defendant says that said Helena Bridge Company, as a corporation, is in effect dissolved, firstly, because said company has failed to elect its directors and officers, as required by their said charter; and, secondly, because no five directors can now be elected who are beneficially interested in said corporation in accordance with section 5 of their charter.

The only persons who are now beneficially interested therein pecuniarily are the complainants in this bill, Thomas Ruckman, H. H. McLane, and James M. Elder, the latter of whom, being the
45 owner of fifteen hundred dollars invested in said bridge or its stock, has made an arrangement with said Z. King & Son, as defendant is informed and believes, whereby his interest has become that of the complainants in this bill.

Defendant says that the bridge now built at Helena, Texas, was not built in accordance with said contract; that said Z. King & Son and all the parties in interest have equally failed specifically to carry out any of their said contracts; that the only property and assets owned by said Helena Bridge Company, or those entitled to its assets, is the aforesaid bridge, together with the tolls and revenues derived therefrom, a part of which have already been received by said Z. King & Son and their agents; that the only persons interested in and owning said assets are said Z. King & Son, Thomas Ruckman, H. H. McLane, and James M. Elder, as the affiant hereto is informed and believes.

This defendant, further answering, denies that said complainants are entitled to the relief in said complaint prayed for, or any part thereof.

Wherefore he prays that said pretended promissory notes and deed in trust set up in complainants' bill be declared and decreed to be null and void as between complainants and the Helena Bridge Company; that the equities between the parties be ascertained, settled and adjudicated; that the tolls, revenues and profits of
46 said bridge be accounted for; that said Helena Bridge Company be declared and decreed to be dissolved as a corporation, and, if necessary, that a receiver be appointed; that on the basis of the contracts and agreements set up in this answer the amount and extent of the rights and ownership of each party in said bridge be ascertained, declared, and decreed, for general relief, and for such decree as to the costs in this behalf as to equity belongs and to your honors may seem meet.

THE HELENA BRIDGE COMPANY,
By HIRAM H. McLANE.
HOWARD & HARRISON,
Solicitors for the Helena Bridge Company.

UNITED STATES OF AMERICA, *State of Texas, County of Bexar:*

Hiram H. McLane, being duly sworn, deposes and says that he is one of the parties subpœnaed to answer for the Helena Bridge Company and named in the foregoing answer subscribed by him; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he verily believe it to be true.

HIRAM H. McLANE.

47 Sworn to and subscribed before me this 2nd day of October A. D. 1880.

[L. S.] GEORGE PASCHALL,
U. S. Commissioner, West. Dist., Texas.

Endorsed: U. S. circuit court. No. 3. In chancery. Z. King & Son *vs.* The Helena Bridge Company. Original answer of The Bridge Co. Filed Oct. 4, 1880. W. C Robards, clerk.

"*Exhibit A to Answer.*"

Copy of contract No. 2.

This contract, made this 13th day of September, A. D. 1875, by and between Z. King & Son, of the city of Cleveland and State of Ohio, party of the first part, and The Helena Bridge Company, of the county of Karnes and State of Texas, party of second part, witnesseth: That the said party of the first part contracts and agrees to and with the party of the second part to build, paint, and make complete and have ready for use by the first day of January, 1876, for the party of the second part a wrought-iron tubular or beam-lever bridge of Z. King's latest improved patent over the stream called the San Antonio river, at a point where Cherry street strikes said stream in the town of Helena, county of Karnes, and
48 State of Texas, according to the following specification, viz:

Extreme length of bridge, 315 feet; No. of spans, 3, being 90 feet, 100 feet, and 125 feet each; roadway, 16 feet; the joists to be 3 inches thick and 8 inches wide and 22 feet long; floor beams, 5 inches thick, 12 — wide, 18 feet long, of good sound lumber; floor of good sound pine plank 3 x 10 inches and laye*d* diagonally. All the materials of said bridge are to be purchased by the party of the first part and are to be of good and suitable quality, and the work is to be done in a thorough workmanlike manner. The party of the second part *of the* agrees to pay to the party of the first part the sum of twenty-one thousand currency dollars for the said bridge, as follows, viz., five thousand dollars on the day of the delivery of the iron material of said bridge at Helena, six thousand dollars on the completion of said bridge; and the party of the first part are not to be held responsible for any unavoidable delays in railroads or the elements or any other unavoidable causes — out of their contract.

The balance of the twenty-one thousand dollars, after the
49 payments above specified,—be paid to the party of the first part in paid-up stock of said company. The party of the first part further agrees to furnish and erect, from good wrought-iron, supports for said bridge, 48 feet in length, to be placed on good and suitable foundation, at least one foot below low-water mark of said stream.

Bridge warranted to sustain a moving load of 2,000 lbs. per lineal foot.

There are to be a double set of bottom lateral braces and gas-pipe strip between the chords where there are no iron beams.

Z. KING & SON,
By S. A. OLIVER, *Ag't.*
THO. RUCKMAN,
For Int. of Bridge Co.
T. K. BAILEY, *Sec'y.*

Signed in the presence of—
L. G. HARRISON.
L. L. ARCHER.

Endorsed: Z. King & Son with Helena Bridge Co. Copy of contract. U. S. C. c't. Ch'y. No. 3. Z. King & Son *vs.* Helena Bridge Company *et als.* Exhibit A to answer. Filed Oct. 4, 1880. W. C. Robards, clerk.

"*Exhibit B to Answer.*"

THE STATE OF TEXAS, *County of Bexar:*

This agreement, made and entered into this 2nd day of March, A. D. 1876, by and between Hiram H. McLane, of the county
50 of Bexar and State of Texas, and Z. King & Sons, of the city of Cleveland and State of Ohio, the said McLane acting for himself, and S. A. Oliver, the general agent for Z. King & Sons, for the State of Texas, and James A. King, one of the firm of Z. King and Sons, acting jointly, having full and complete authority so to do, for Z. King & Sons, witnesseth: That whereas the said firm of Z. King & Sons having contracted by and through their agent, S. A. Oliver, as aforesaid, with Thomas Ruckman and others, of the county of Karnes and State of Texas, a chartered corporation under the title and by the name of the Helena Bridge Company, "to construct for said Bridge Company one of Z. King'- improved patent iron bridges across the San Antonio river, at or near Helena, in said county of Karnes; and whereas the said bridge so to be constructed is being placed by said Z. King & Sons across said stream so that one end shall rest upon the land belonging to the said McLane, thereby necessitating the use of a portion of said lands to support said end of said bridge as well as the right of way across said lands for purposes of travel to and from said bridge, the same being a 'toll bridge;' and whereas
51 the said McLane subscribed stock to the amount of two thousand dollars to aid in said enterprise, conditioned, however, that the privileges and use of said lands for support of said bridge

and the right of way as aforesaid should be paid for out of said stock so subscribed as aforesaid; and whereas the said bridge now being in process of construction by the said Z. King & Sons, and the time being near at hand when such privilege of support and right of way shall be needed, now, therefore, it is agreed by and between the contracting parties, as hereinbefore mentioned, that the said Helena Bridge Company shall have the right of such support for said bridge and the right of way across said lands, the said right of way to be for a width of sixty feet, beginning at the end of said bridge, where it shall rest upon the said lands of the said McLane, and extending in a southeasterly direction or at such variation therefrom as shall be agreed upon by said McLane and the said Bridge Company, to the intersection of the eastern line of the Peter S. Elliott survey of land, the same being the west line of Andres Soto survey, and thence along said eastern line with a width of thirty feet to the southern terminus of the same, the said privilege of support and right
52 of way to continue for the term of twenty years, according to the terms of the charter of said Helena Bridge Company, provided said bridge, now in process of construction, shall be completed, and shall be kept in such good order as to be used for all purposes of travel or a public highway, and such right of way as aforesaid shall be a public highway and to be used as such during the continuance of such said chartered rights, provided said bridge shall be so kept in good order; but should said bridge not be so kept in good order then the privileges of support and right of way shall cease to inure to the said Helena Bridge Company, and shall revert, with all the benefits of the same, to the said Hiram H. McLane, his heirs or assigns.

And whereas the said Hiram H. McLane has this day paid to the said S. A. Oliver, agent, and James A. King, partner as aforesaid, on account of and for the use and benefit of the said Z. King & Sons, the sum of one thousand dollars, and has executed this instrument granting the right therein specified to the Helena Bridge Company in compensation for and payment of the amount of two thousand dollars of stock subscribed as aforesaid, now, therefore, the said Z. King & Sons, by and through the said
53 S. A. Oliver and James A. King, the parties aforesaid, they being duly authorized to so contract, agree that said payment of one thousand dollars and the execution of this instrument with the grants therein made to the Helena Bridge Company shall be in full for such subscription of two thousand dollars as aforesaid, and that the paid-up stock in such said Bridge Company be issued therefor to that amount, being twenty shares of one hundred dollars each, and that, if such issue of stock be not made directly by said company in consideration therefor, then and — that case the said Z. King & Sons shall cause to be transferred that amount of stock out of their share of the paid-up stock of said Bridge Company, as such share of said stock shall fall to them in accordance with the contract entered into between the said Z. King & Sons and the Helena Bridge Company, such transfer to be made upon the completion of the said bridge as aforesaid.

And it is further agreed that if the said Z. King & Sons shall fail to complete the said bridge now in process of construction as aforesaid by the first day of May next, then the said firm of Z. King & Sons shall refund to the said Hiram H. McLane the said
54 amount of one thousand dollars so paid as aforesaid, with interest at the rate of two per cent. per month from the time of such payment, and the privileges herein stipulated to be granted the said Helena Bridge Company shall revert to the said McLane; and it is further agreed and expressly stipulated herein that the said Helena Bridge Company shall have no right to use the said strips of sixty and thirty feet as aforesaid, and shall not use them, or any portion thereof, for other purpose or purposes than that of a public highway for the use of those who may desire to go to and from said bridge as aforesaid, and the same shall be governed by and be subject to all the rules and regulations prescribed in the statutes and laws of the State of Texas governing public highways and applicable thereto, except in so far as to the reserved rights of the said McLane is herein stipulated and set forth.

And it is further agreed by the contracting parties herein that the said McLane shall not be required to fence off said strips of sixty and thirty feet as aforesaid unless he shall elect so to do; and further that he shall not be required to remove or change any
55 portion of the fencing now on said eastern line of said Peter S. Elliott survey if sufficient room otherwise be given for the passage of vehicles and of foot and horsemen. And it is further agreed that he shall have the right to place a gate at the southern terminus of said strip of thirty feet (being the southeastern corner of the Peter S. Elliott survey) so to be used for purposes of a public highway as aforesaid, and also at such other point or points along said strips, closing the same up thereby with such said gate or gates, as he may decide upon, said gates to be used for purposes of ingress and egress by those having occasion to use the said highway as aforesaid. And it is further agreed by the contracting parties herein that in case the said McLane shall not erect fencing along the right of way herein granted the said Helena Bridge Company shall not be responsible for any damage done the said McLane by reason of said fencing not being built or of gates being left open.

And it is further agreed that if the said Z. King & Sons shall decide not to complete said bridge they shall have the right to return the said McLane the one thousand dollars paid them by him, as heretofore mentioned, if they shall so elect, within ten days from the date hereof, without interest.

56 In testimony whereof we, the contracting parties herein, have subscribed our names, in the city of San Antonio, the day and date above written, signing in duplicate.

HIRAM H. McLANE,
Z. KING & SON,
Per JAS. A. KING AND
S. A. OLIVER.

Endorsed: Z. King & Son with H. H. McLane. Agreement.

U. S. C. c't. Ch'y. No. 3. Z. King & Son *vs.* Helena Bridge Co. & S. A. Oliver. Exhibit B to answer. Filed Oct. 4, 1880. W. C. Robards, clerk.

Exhibit C to Answer.

Copy of agreement — Z. King & Son & Thos. Ruckman.

This agreement, made and entered into this 6th day of March, 1876, by and between Z. King & Son, of Cleveland, Ohio, of the first part, and Thos. Ruckman, of Helena, Texas, — the second part, witnesseth: That whereas the said Z. King & Son are now erecting an iron bridge of their manufacture for a corporation known as the Helena Bridge Company across the San Antonio river, at Helena, Texas; and whereas the said bridge is nearly completed, and
57 on the completion of the same there is to be paid to the said Z. King & Son ten thousand dollars, in paid-up stock of the Helena Bridge Co., it is agreed by the said Thos. Ruckman that he will pay for the said Z. King & Son all the lumber used in the erection and completion of said bridge, which timber was principally purchased from Huck & Co., Cuero, Texas.

The said Ruckman also agrees to pay all the expenses of erecting said bridge of every kind whatsoever, being principally of labor and board of men erecting said bridge. The said Ruckman further agrees to have issued to one Hiram H. McLane, of San Antonio, Texas, the amount of one thousand dollars of the paid-up stock of the said Helena Bridge Co. for and in consideration that the — Hiram L. McLane shall give the said Helena Bridge Company a right of way through the land of said McLane abutting to the end of said bridge, a true copy of which agreement is annexed to this and marked Schedule "A." For and in consideration of the faithful performance, by the said Thomas Ruckman, of all and each of these several matters, the said Z. King & Son agree to have transferred to the said Thos. Ruckman the said ten thousand dollars of paid-up stock in the Helena Bridge Company instead of to themselves: Pro-
58 vided further, That the said Ruckman shall pay to L. S. Tanker and John Geary two hundred dollars in paid-up stock of the Helena Bridge Co., divided equally between them.

In witness whereof we have set our hands and seals this day herein mentioned.

(Signed) Z. KING & SON. [SEAL.]
" THOS. RUCKMAN. [SEAL.]

Endorsed: Copy of contract between Z. King & Son and Thos. Ruckman. U. S. c't c't. Ch'y. No. 3. Z. King & Son *vs.* Helena Bridge Co. *et al.* Exhibit C to answer. Filed Oct. 4, 1880. W. C. Robards, clerk.

Z. KING & SON *vs.* THE HELENA BRIDGE CO.

OCTOBER 4, 1880.

On this day came Hiram H. McLane, one of the parties named in the bill herein, and for himself and the respondent, the said Helena Bridge Company, files herein his answer.

W. C. ROBARDS, *Clerk.*

Order.

Z. KING & SON *vs.* THE HELENA BRIDGE CO. *et al.*

NOV. 11, 1880.

Ordered that this cause be continued generally.

Exhibit D to Answer.

THE STATE OF TEXAS, *Karnes County, ss*:

59 Know ye that we, the undersigned, Thos. Ruckman, T. K. Bailey, John Ruckman, and L. W. Burris, who are resident citizens of said State of Texas, have this day voluntarily associated ourselves together for the purpose of creating a private corporation in accordance with the laws of said State of Texas, and, by such association, we do hereby create a private corporation under the laws of said State of Texas for such cases made and provided, and, as such association and corporation, we do hereby recognize and adopt this instrument as the original charter of said private corporation.

Section 1st. Said private corporation is hereby named and shall be called by the name of The Helena Bridge Company.

Section 2nd. Said corporation is formed and created for the purpose of constructing, operating, and maintaining, for the benefit of said corporation and for the accommodation of the travelling public, a wrought-iron bridge across and over the stream known as the San Antonio river, in said county of Karnes, at a point or place upon said stream where the line between Thos. Ruckman and W. H. Mayfield strikes the San Antonio river.

Sec. 3. The place where the business of said corporation
60 shall be transacted shall be at Helena, Texas.

Section 4th. Said corporation shall exist for the full period of twenty years.

Section 5th. The business of said company and general management of its affairs shall be vested in a board of five directors, who shall be beneficially interested in said corporation, and said Thos. Ruckman, T. K. Bailey, John Ruckman, & L. W. Burris, and H. H. McLane, all of whom reside in said county of Karnes, shall constitute the board of directors of said company for the first year of the existence of said corporation.

Section 6th. The capital stock of said company shall be the sum of twenty-five thousand dollars, divided into shares of one hundred dollars each.

Section 7th. The stream intended to be bridged or crossed by said company is the stream generally known or called in said county by the name of San Antonio river, and said bridge is intended to be operated and controlled by said corporation as a toll bridge upon said highway and to be so operated and controlled for the profit and benefit of said company.

Section 8th. Unless otherwise regulated by the honorable county court of said county of Karnes, the following will be the

61 maximum rates or amounts of toll charged and received from the public generally for crossing persons or property over said bridge after its completion and when so operated and controlled as aforesaid, to wit: For every footman, five cents; for every man and horse, ten cents; for every one-horse vehicle, twenty-five cents; for every two horse or mule or two-ox vehicle or wagon, fifty cents; for every four horse or mule or four-ox vehicle or wagon, sixty cents; for every six horse or mule or six-ox vehicle or wagon, seventy-five cents; for every additional work animal upon such vehicle or wagon, five cents; for every loose horse, five cents; for loose sheep, hogs, goats, cattle, or other stock, three cents per head.

Section 9th. That no other toll-bridge or toll-ferry of any kind shall be constructed, erected, or established upon or over said stream within the distance of three miles next above or up said stream from the point where said bridge of this corporation is to be constructed, as shown and set forth as aforesaid, and no toll-bridge or toll-ferry shall be established or constructed on said stream at any point within three miles next below or down said stream from where said bridge of this corporation is to be erected as aforesaid,
62 without the consent of this corporation.

Section 10th. All of said capital stock has been subscribed, and this corporation is created in good faith and with the *bona-fide* intention of constructing said bridge over said stream in the manner and for the purposes above set forth.

Section 11th. Witness the hands and seals respectively (using scrolls for seals) of said incorporators first above named this 7th day of June, A. D. 1875.

(Signed) THOS. RUCKMAN. [SEAL.]
" T. K. BAILEY. [SEAL.]
" JOHN RUCKMAN. [SEAL.]
" L. W. BURRIS. [SEAL.]

THE STATE OF TEXAS, } ss:
Karnes County, }

I, L. G. Hasenan, a notary public in and for said county of Karnes, do hereby certify that Thos. Ruckman, T. K. Bailey, John Ruckman, & L. W. Burris, who are severally and personally known to me as the same persons whose names appear subscribed to the foregoing instrument or charter as having executed the same, and who are personally known to me to be resident citizens of said State of Texas, severally appeared before me this day in person and then and there declared and acknowledged to me that the foregoing instrument is the original charter [of] "The Helena Bridge Company," and
63 that they subscribed and executed the same as incorporators of said private corporation, the said "Helena Bridge Company," as the charter of said corporation voluntarily, for the uses, considerations, and purposes therein set forth and expressed.

In witness whereof I have hereunto set my hand and official seal this 7th day of June, A. D. 1875.

[L. S.] (Signed) L. G. HARMAN,
Not. Pub., K. C., Texas.

Endorsed as follows: Original charter of Helena Bridge Company. Filed for record in the department of state June 11th, 1875. Signed, A. W. DeBerry, secretary of state.

THE STATE OF TEXAS, *Department of State:*

I, A. W. DeBerry, secretary of state for the State of Texas, do hereby certify that the above and foregoing is a true and correct copy of the original charter of the "Helena Bridge Company," together with the endorsements thereon, and now on file in this office.

In testimony whereof I hereto sign my name and affix the
64 great seal of State, at the city of Austin, this the 16th day of February, A. D. 1876.

[L. S.] A. W. DEBERRY,
Sec't'y of State.

Endorsed: Copy of charter. U. S. C. c't. Ch'y. No. 3. Z. King & Son *vs.* The Helena Bridge Company *et al.* Exhibit D to answer. Filed Oct. 4th, 1880. W. C. Robards, clerk.

Order.

Z. KING & SON *vs.* THE HELENA BRIDGE CO.

AUG. 6TH, 1881.

On this day came the complainants, Z. King & Son, by their counsel and solicitors, and filed herein their demurrer, exceptions, and replication to the answer of Hiram McLane, heretofore filed herein.

Complainants' Demurrer, &c.

Z. KING & SON
vs.
THE HELENA BRIDGE COMPANY. } No. 3. In Chancery.

And now on this day comes the complainants in this cause and demur and file this their general and special exceptions to the answer filed in this cause by Hiram H. McLance on the 4th day of October, 1880.

They say that said answer is not sufficient, and the matters
65 therein set out in manner and form as the same appears on file constitute no grounds why complainants should not have the relief prayed for.

1. And for special grounds of demurrer complainants say that the Helena Bridge Company is sued as a corporation, and the said McLane shows no authority from said corporation to answer the bill of complaint filed in this cause.

2. Said pretended answer undertakes to answer for said Helena Bridge Company, thereby admitting that there is such a company and organization; and in the same answer it is denied that there is such an organization.

3. So far as said answer purports to be an answer for said Hiram H. McLane in his individual right, it is insufficient, because there was no permission obtained of this hon. court for said McLane to

file a cross-bill, or because the subject-matter of said cross-bill is cognizable at law.

4. The allegations and statements in said answer as to the understanding between said S. A. Oliver, as the agent of said complainants, and the said H. H. McLane, when they were soliciting subscriptions to aid in the erection of said bridge at Helena,
66 appears to have been prior to the organization of said Helena Bridge Company and a mere understanding, without consideration or binding force on any one, and the same constitutes no equitable reason for denying the relief sought in this cause.

5. And as to the allegation touching said complainants' action in collecting said subscriptions it is not alleged or shown what part of said statement in said answer is true within the knowledge of said McLane, nor is it shown what part of said statement is upon the informations of others that he believes to be true.

6. As touching the allegation and statement contained in said answer, and the exhibit thereto marked B, it is not shown or alleged that there was any consideration for said agreement.

It is not alleged or shown that said complainants had any power or authority to enter into such an agreement.

It is not shown or alleged that said Oliver had any power or authority (?) — bind complainants to such an agreement.

It is not shown that said stock, if issued, would have been of any value to said McLane or that said McLane has been injured in any way by reason of said agreement, nor is it alleged or shown
67 that said agreement, if *if* ever made by authority of complainants, has not been carried out and fulfilled.

For all these and other reasons appearing on face of said answer complainants pray that the same be stricken out.

And without waiving any of said exceptions or demurrers, but relying and insisting upon the same, if in the opinion of the court said exceptions are not well taken, then complainants, by way of replication to so much of said answer as they are advised that it is necessary to reply to, say that after the organization of said Helena Bridge Company, under said charter set out in said pretended answer, the Helena Bridge Company adopted a code of by-laws, a true copy of which code being now on file in this cause attached to the deposition of S. A. Oliver, and which copy will be offered in evidence on the trial of this cause, in which code and by the terms thereof it was ordained and established that three of the directory of said Helena Bridge Company should constitute a quorum to do business, and that at said meeting of said board and after the adoption of said code of by-laws the meeting of said board took place under a regular call and notification therefor, when and
68 where these of said directory did meet publicly in the town of Helena, and at said meeting the notes and mortgage sued on in this suit were executed for the purpose and reasons substantially as follows:

The iron and materials for the erection of said bridge had been furnished — shipped from Cleveland, in the State of Ohio, and most of it was then on the spot where said bridge was erected; that

the said company had failed to furnish the money to pay for hauling and transportation to complianants, as it had agreed upon, and said company so failing, and in consequence of said failure, complainants then proposed to said company through its board of directors that if said Helena Bridge Company would pay complainants original cost for the iron materials for said bridge that the complainants would withdraw from said company and claim no interest in said bridge except as hereinafter stated.

Thereupon it was agreed and understood by and between complainants and said Helena Bridge Company that said Bridge Company should issue the notes and make the mortgage sued on in this suit, which amounts so set forth in said notes or mortgage is
69 the exact amount of the first cost, or the cost of said bridge at Cleveland, in the State of Ohio; that said notes and mortgage were then issued by said Bridge Company, and delivered by it to complainants in manner and form as the same are set out in said bill of complaint, and thereafter complainants had no further or other interest in said bridge except that of mortgagees.

Complainants further state that whatever money was paid to said company, or to any one for said company, on subscriptions by said H. H. McLane, was used and expended for the benefit of said Bridge Company in paying freights on said bridge material, and for the use and benefit of said Bridge Company.

And complainants further state that the right of way, if any was given by said McLane, or any subscriptions paid by him in that way, went to the use and benefit (?) [of] the Helena Bridge Company; that whatever rights said McLane may have for or on account of any monies, right of way, or otherwise, paid or given, touching said bridge or its erection, are held and owned and are to be sought by him from said Helena Bridge Company, of which he is still a member.

JOHN IRELAND & J. M. ECKFORD,
For Complainants.

70 Endorsed: No. 3. Z. King & Son *vs.* Helena Bridge Co. Complainants' dem. & exceptions & replications to McLane's answer. Filed Aug. 6th, 1881. W. C. Robards, clerk.

Order of Aug. 8. 1881.

Z. KING & SON *vs.* THE HELENA BRIDGE CO.

On this day came the complainants, by their solicitors, J. M. Eckford, Esq., and John Ireland, Esq., and set down for hearing, at the next succeeding rule day, or thereafter at the convenience of the court, their demurrer, exceptions, and replications to the answer of Hiram McLane heretofore filed herein.

W. C. ROBARDS, *Clerk.*

Order of Oct. 6th, 1881.

Z. KING & SON *vs.* THE HELENA BRIDGE CO. *et al.*

On this day came Howard & Harrison, of counsel for the defend-

ants, and set down for hearing, at the convenience of the court, the demurrer of defendants to the original bill of complainants.

Motion to Strike Complainants' Exceptions and Replications from the File No. 3, Ch'y.

Z. KING *vs.* HELENA BRIDGE CO.

The defendant moves to strike complainants' exceptions and
71 replications to McLane's answer and cross-bill from the files—

1st. Because the same contains no certificate of counc*il* or affidavit of the party, as required by Rule No. 31 of the Supreme Court of the United States for the practice in equity.

2nd. Because the same was not filed in time or by order upon cause shown, as required by Rule No. 61 of said rules.

HOWARD & HARRISON,
For Defendants.

Endorsed: U. S. circuit court. No. 3. In chancery. Z. King & Son *vs.* Helena Bridge Co. Motion to strike complainant's exceptions — replications from the file. Filed Oct. 7, 1881. W. C. Robards, clerk.

Order of Oct. 7, 1881.

Z. KING & SON *vs.* HELENA BRIDGE CO. *et al.*

On this day came Howard & Harrison, of counsel for defendants, & set down for hearing the motion of defendants to strike complainants' exceptions and replications from the file.

Order Oct. 12, 1881.

Z. KING & SON
vs.
HELENA BRIDGE CO. & H. MCLANE } No. 3.

This cause coming — to be heard on the original and
72 amended bill and answer filed and proofs, the parties waiving all exceptions and demurrers and agreeing to submit the cause on the merits, and the court, after due consideration of all the evidence, including depositions, exhibits, and five promissory notes and deed of trust executed by the Helena Bridge Company to Thos. Ruckman, and by Thos. Ruckman, president, John Ruckman, treasurer, and T. K. Bailey, secretary of the Helena Bridge Company, transferred to the complainants, Z. King & James King, comprising the firm of Z. King & Son.

There appears to be due to said complainants from the Helena Bridge Company the sum of ten thousand nine hundred and nineteen dollars, principal and interest.

And it also appearing to the court that the complainants hold a lien on all the right, title, and interest which the said Helena Bridge Company has in and to the new three-span iron bridge of Z. King

& Son-, patent constructed across the San Antonio river near the town of Helena, Karnes county, Texas, together with all and singular the rights, members, hereditaments, franchises, ways, and appurtenances to the said bridge belonging or in any wise incident
73 thereto or connected therewith, for the purpose of securing the payment of said sum of money so due to said complainants:

It is ordered, adjudged, and decreed that said mortgage lien be, and is hereby, foreclosed on said bridge, franchises, rights, ways, privileges, and appurtenances hereinbefore recited, and that the clerk of this court, after the adjournment, do issue an order of sale, it appearing to the court that the trustee refused to execute the trust directed to the marshal of this court directing him to proceed to advertise said property and make sale of the same, as under execution, for cash, to satisfy said complainants' debt.

It is further ordered that the Helena Bridge Company do have until the first Tuesday in March, A. D. 1882, to pay and satisfy complainants' debt, and that the marshal advertise said property so the sale shall not take place before said date.

When said property is sold, should the proceeds of said bridge property not be sufficient to satisfy complainants' debt, then execution may issue against said Bridge Company for any balance.

It is further ordered that the amount here found to be due to complainants bear interest at the rate of ten per cent. per annum from this date, and should said bridge property sell for more
74 than the debt, interest and costs, then that the marshal pay such residue over to the said Helena Bridge Company.

Motion to Reform Decree.

Z. KING & SON *vs.* HELENA BRIDGE CO.

And now comes the plaintiff and moves the court to amend and reform the decree entered in this cause at a former day of this term so as to have the sale of the property, the bridge, *sold* by the marshal on the first Tuesday of February, 1882, instead of the first Tuesday of March, 1882, because the first Tuesday of March, 1882, is the return-day for the order of sale issuing in this cause from this court, and said sale cannot legally be made under said order of sale on said first Tuesday in March, wherefore complainant prays that the decree be thus amended and for general relief.

JOHN IRELAND,
Att'y for Z. King & Son.

Endorsed: No. 3. Z. King & Son *vs.* Helena Bridge Company. Motion to reform decree. Ireland. Filed Oct. 25, 1881. W. C. Robards, clerk.

75 *Answer to Motion to Reform Decree.*

Circuit Court of the United States for the Western District of the State of Texas, in session at San Antonio. October Term, 1881. In Equity.

Z. KING & J. A. KING, Plaintiffs,
against
THE HELENA BRIDGE CO. and Others, Defendants. } No. 3.

Now comes the defendant, The Helena Bridge Company, one of the defendants in the foregoing-entitled suit, and for answer to the plaintiffs' motion to reform the decree in said suit, respectfully shows to the court that it appears from the pleadings, testimony, and record in said cause that the court has no jurisdiction of the subject-matter of said suit; that the decree therein is inequitable and unjust to the defendant, The Helena Bridge Company; that the plaintiffs' bill of complaint is not sufficient in substance to authorize the decree or the modification thereof, as prayed for in said motion, and that such modification would work an unnecessary hardship upon the defendant, The Helena Bridge Company, and that since the rendition of said decree no circumstances have occurred to require or

76 justify the reformation thereof as prayed for in said motion.

Wherefore the defendant, The Helena Bridge Company, prays that said motion be denied with costs, and that the defendant, The Helena Bridge Company, have such other and further relief, or both, as shall be just and equitable in the premises.

HOWARD & HARRISON AND
CARR & TEEL,
Solicitors for Defendant, The Helena Bridge Company.

Endorsed: No. 3. In equity. Circuit court of the United States for western district for State of Texas. Z. King *et al. vs.* Helena Bridge Company *et al.* Howard & Harrison, Carr & Teel, solicitors for defendants, The Helena Bridge Company. Answer to motion to reform decree—original. Filed Nov. 7, 1881. W. C. Robards, clerk.

Petition for Rehearing.

Circuit Court of the United States for the Western District of Texas, in session at San Antonio. October Term, 1881. In Equity.

Z. KING AND J. A. KING, Plaintiffs,
vs.
THE HELENA BRIDGE CO. *et al.* } No. 3.

77 To the circuit court of the United States for the western district of the State of Texas:

Your petitioner, the Helena Bridge Company, one of the defendants in the foregoing entitled suit, humbly petitioning and praying for a rehearing in said suit upon the special matter and for the cause hereinafter stated, respectfully shows to this court that the decree in said suit is based upon the notes and trust-deed therein

mentioned, only that it was entered therein at this term of the court; that the same is in favor of the plaintiffs and against the defendants, and the defendant, the Helena Bridge Company, respectfully represents that said decree is contrary to the evidence adduced on the trial of said suit and to the law of the case for the following reasons: That it appears from the testimony, pleadings, and the records in the case—

1st. That the plaintiffs, through S. A. Oliver, their agent for the State of Texas, were the originators of a plan for a toll-bridge on the failure of a free bridge, as desired by the people of Karnes county, and they, through said agent, devised the scheme of creating the defendant corporation, the Helena Bridge Company, for the purpose of selling the bridge in question to the said defend-
78 ant when it should be created.

2d. That the plaintiffs, through said Oliver, procured subscription to the capital stock of the Helena Bridge Company, thereafter to be organized, in order to organize the same for the purpose aforesaid, and to induce subscriptions thereto made estimates of the cost of a bridge of the plaintiffs' manufacture, to be located at the place where the bridge in question now stands, to be at a cost not to exceed sixteen thousand dollars, and promised that the plaintiffs would subscribe or take stock equal to one-half of the cost of erection of said bridge in part payment therefor.

3d. That the subscription to the stock for the building of such bridge was upon a printed blank prepared by the said Oliver, specifying that the said subscription was for a wrought-iron bridge of the patent known as Z. King's latest improved patent wrought-iron bridge, and said bridge shall be constructed in a workmanlike manner upon substantially constructed piers or abutments of either iron or stone material, and said abutments or piers, as well as the approaches to said bridge, shall be built by the furnishers and contractors of said bridge, and all of said work shall be done under a contract specially made with said Helena Bridge Company;
79 and there was subscribed thereon to the stock of said Helena Bridge Company $10,800, excepting therefrom $300, which was donated.

4th. That the plaintiffs, by said Oliver, gave notice of and called the first meeting of subscribers on the 7th day of June, 1875, and took an active part in the deliberations of the same; that there was but about 60 % of the subscribed stock represented at said meeting, including the plaintiffs' promised subscription at the rate of $8,000, there being only $4,600 represented by other subscribers, so that the plaintiffs had the controlling influence in the proceedings of said meeting; that at said meeting a pretended and illegal organization of the said Helena Bridge Company was had and a pretended code of by-laws adopted and pretended directors elected before the same could be lawfully done, and contrary to the statutes in such case made and provided.

5th. That at a meeting of the pretended directors on the same day and before the organization of the said Helena Bridge Company, under the laws of the State of Texas, the plaintiffs, by said

Oliver, presented to said directors a printed charter to be adopted, and proposed a contract to build a bridge, and through his
80 influence aforesaid procured a contract with said pretended directors to build said bridge against the protest of said directors and the subscribers of stock as aforesaid.

6th. That on the 13th day of September, 1875, the plaintiffs, by said Oliver, procured the contract of June 7th, 1875, to be cancelled, and then and there made a contract with the defendant, The Helena Bridge Company, by the terms of which the plaintiffs agreed to build, paint, and make complete the bridge in question in this suit, and have the same ready for use by the first day of January, 1876. The contract provided that the defendant, The Helena Bridge Company, should pay therefor $21,000, as follows: $5,000 on the delivery of the iron and $6,000 on the completion of the bridge and the remainder of $10,000 in paid-up stock of the company; that at the meeting at which said contract of the 13th of September, 1875, was made said plaintiffs, by said Oliver, and other stockholders participated therein, and that the place of said bridge was changed from a two-span to a three-span bridge, which change was affected through the solicitations of said Oliver.

7th. That the plaintiffs or said Oliver held the said sub-
81 scriptions to stock, and collected thereon before the 6th day of March, 1876, to apply on the payment for the bridge in question under the contract, the sum of $4,650, of which $2,000 was paid by H. H. McLane, one of the defendants herein, $1,000 in cash and $1,000 in the right of way which the plaintiffs purchased for the Helena Bridge Company in order to enable them to complete said bridge under the contract.

8th. That said bridge was not completed or ready for use on the 1st day of January, 1876, as agreed, nor was the same completed or all the iron delivered on the 6th day of March, 1876, but the plaintiffs on that day, in order to avoid the consequence of their failure to complete said bridge as agreed, did, by and through said Oliver and James A. King, one of the plaintiffs, in person, procure, at their own solicitation and connivance, a contract with one Thomas Ruckman, one of the defendants herein, as a private individual and not in the capacity of president of the said Helena Bridge Company, wherein it was agreed that said Ruckman should pay for the lumber used in and all the expenses of erecting said bridge, said expenses being principally for labor and board of men, and to
82 have issued to Hiram H. McLane, one of said defendants herein, $1,000 in paid-up stock for the right of way previously purchased by said plaintiffs, and to pay to L. S. Lawton $100.00 and John Yeary $100.00 in paid-up stock of said company, and in consideration thereof the plaintiffs therein agreed to have transferred to said Ruckman the ten thousand dollars paid-up stock in said company, which would be due therefrom to said plaintiffs when said bridge should be completed.

9th. That by the terms of said contract between said plaintiffs and said Ruckman he became a sub-contractor to and an agent of

the plaintiffs while he was yet acting as the president and the official agent of the defendant, the Helena Bridge Company.

10th. That the defendant, the Helena Bridge Company, did not consent to said contract between the said plaintiffs and said Ruckman, nor in any way release the plaintiffs from the performance of their contract to build the bridge as aforesaid.

11th. That the plaintiffs, in order to deliver the iron and material for said bridge, were obliged to pay large sums of money for freights and for hauling said iron from the depot at *at* Kingsbury, Texas, and lumber from Cuero, Texas, and for the purpose of paying the same,
83 and also paying other expenses incumbent on them under the contract with the defendant, the Helena Bridge Company, delivered to said Thomas Ruckman, as their agent and sub-contractor, the said subscriptions to stock on which there was unpaid thereon the sum of $6,150, to be collected by said Ruckman for the said plaintiffs, and that said Ruckman did collect the same and the whole thereof, $1,000 of which was paid by J. M. Elder within a few days after the same came into the said Ruckman's hands, and five hundred dollars by L. W. Burris, and also $100.00 by Craig McCody.

12. That the bridge was not completed ready for use until about the last day of July, 1876, and that since the completion of the same there has been collected of toll, by the agents of the plaintiffs and for them, the sum of $2,691.09, as appears from the bill or statement of tolls on file rendered by Thomas Ruckman and by estimates on the basis thereof for and during the time said tolls were collected by the plaintiffs' agents as aforesaid up to the time of the trial of this cause; that the whole amount received by the plaintiffs, including the subscriptions to stock and donations, with which they are chargable, and for which the defendant, the Helena Bridge Com-
84 pany, is entitled to credit on the contract for the construction of said bridge, is $13,491.09, over and above the $10,000 paid-up stock provided for in said contract and which the plaintiffs agreed to transfer to said Thos. Ruckman in the contract with him, and that the defendant, the Helena Bridge Company, has never received any part of said tolls or subscriptions or donations.

13th. That the bridge in question has never been delivered to the defendant, the Helena Bridge Company, nor to any one for it, nor is said defendant now in the possession thereof or able to obtain the same, and that the plaintiff-, by their said contract with said Thomas Ruckman, placed the possession of the same beyond their control, and they are not able to deliver possession of said bridge to the defendant, the Helena Bridge Company.

14th. That at the time of making said notes and the trust deed there was nothing due or owing to the plaintiffs from the defendant, the Helena Bridge Company, upon the contract for the construction of the bridge or upon any other contract or for any other purpose or cause or at all, and there has not since then become due any
85 money on said contract in any manner, and that said notes and deed are without consideration and were only secured by the plaintiffs through their undue influence over said Thomas Ruckman as their agent in that behalf while he was acting as the president of the defendant, the Helena Bridge Company.

15th. That said bridge was to be built in accordance with the contract of subscription and under the contract of September 13th, 1875, and not otherwise, and was so built, except as herein stated, and that there has never been any settlement between said plaintiffs and the defendant, the Helena Bridge Company, for the building of said bridge or the payments thereon to this time.

16th. That at the time of the execution of the notes and trust deed it was not necessary for the Helena Bridge Company "to raise funds for the completion of the bridge," as stated in the minutes of the meeting of March 6th, 1876, under said contract, or at all; but the same was only a pretext resorted to by the plaintiffs and said Ruckman to obtain said notes and trust deed; that in addition to the said $4,650 which the plaintiffs had at that time collected on said subscription they then held and had converted to their own use the remainder of said subscription, amounting to $6,150, and on which there was paid to their agent, Thomas Ruckman, for
86 them $1,000, by one James M. Elder, within a few days thereafter, as aforesaid, and that said defendant, the Helena Bridge Company was not at the time of the execution of said notes and trust deed, or at any other time, indebted to said Thomas Ruckman, and that there was not paid by nor passed from him any consideration for said notes and trust deed to the defendant, the Helena Bridge Company, but that the whole transaction concerning the execution of said notes and trust deed was procured by the plaintiffs through collusion with Thomas Ruckman as aforesaid, in order to avoid their responsibility under said contract and to procure said notes without any consideration therefor.

17th. That said James M. Elder, one of the defendants herein, commenced an injunction suit in Karnes county, Texas, to restrain the sale of the bridge in question under said trust deed by said Oliver, as trustee therein, and that on the 10th day of March, 1878, the said bridge was taken from said Thomas Ruckman, and the possession thereof was taken and held by L. W. Burris, one of the defendants herein, as a receiver in said injunction suit, and that afterwards the plaintiffs, through said Oliver, and by his repre-
87 sentations to said Elder that it might be to his interest to withdraw the suit, procured the same to be withdrawn, with the understanding that the said bridge should be sold under the trust deed; but the receiver in said suit, L. W. Burris, continued to hold possession of said bridge, and collect the tolls and revenues thereof, $114 of which he afterwards turned over to one John Ruckman, one of the defendants herein, who paid the same over to the plaintiffs, with other amounts collected by him, which tolls and revenues constitute a part of the said $2,691.09 hereinbefore alleged to have been collected by the plaintiffs.

18th. That there is justly due and owing to the defendant, the Helena Bridge Company, from the plaintiffs over and above the $11,000 agreed to be paid them on said bridge contract and the said $10,000 of paid-up stock in said company agreed to be assigned by the said Thos. Ruckman, and over and above all set-offs, both legal and equitable, for said subscription, donations, tolls, and profits of

said bridge received and collected by them in the sum of $2,491.09, and that the said defendant, the Helena Bridge Company, is entitled to the judgment of this court therefor.

And the defendant, the Helena Bridge Company, further shows to this court in this behalf that the justice and equity of the case has not been reached by the decree in this suit because—

88 1st. It appears from the testimony that the contract resulting in the notes and trust deed was not a valid [and] legal subsisting contract binding on the defendant, the Helena Bridge Company.

2nd. That it appears from the testimony that a larger amount of money has been paid to the plaintiffs by the defendant, the Helena Bridge Company, than has been credited to it in said decree.

Wherefore the defendant, the Helena Bridge Company, prays for relief from said decree by a rehearing in said suit, and that the defendant, the Helena Bridge Company, have an order from this court upon the plaintiffs to show cause on the next rule day hereafter, or at some other day to be specified by the court in said order, why the defendant's prayer herein should not be granted, and for such other order or relief as shall be just and equitable and proper in the premises; and your petitioner will ever pray.

HOWARD & HARRISON,
CARR AND TEEL,
Solicitors for the Defendant, the Helena Bridge Company.

UNITED STATES OF AMERICA:

STATE OF TEXAS, }
County of Bexar, } *ss:*

89 Hiram H. McLane, being duly sworn, on oath says that he is one of the parties subpœnaed to answer for the Helena Bridge Company, one of the defendants in the foregoing-entitled suit, and that he makes this affidavit of verification for and on its behalf; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge; that he derives his knowledge from the examination of the testimony, exhibits, pleading, and records in said suit.

HIRAM H. McLANE.

Subscribed and sworn to before me the 31st day of October, A. D. 1881.

[L.S.] W. C. ROBARDS, *Clerk.*

Endorsed: No. 3. In equity. United States circuit court of western district of Texas. Z. King & Son *vs.* The Helena Bridge Company *et al.* Petition for rehearing. Original. Howard & Harrison, Carr & Teel, solicitors for the Helena Bridge Company. Filed Oct. 31, 1881. W. C. Robards, clerk. No. 3. In chancery. Nov. 2nd, 1881. Having examined the within application for a rehearing in this cause, upon due consideration thereof the rehearing prayed for is refused. Costs of application and this order ch'd to ap-

plicant. Having refused the rehearing, I decline to issue or grant any rule upon the complainants' solicitor to show cause, &c.
90 E. B. Turner, judge. Solicitor for H. H. McLane excepts to this order. Turner, judge.

Order Nov. 10, 1881.

Z. KING & SON
vs.
THE HELENA BRIDGE CO. *et al.* } No. 3.

This cause coming on again to be heard upon a motion to reform the decree heretofore rendered herein in so far as the same relates to fixing the time for the sale of the bridge, and the same having been considered, and the court being fully advised in the premises, it is ordered that said decree be reformed to the extent that the Helena Bridge Company do have only until the first Tuesday in February, A. D. 1882, to pay and satisfy complainants' debt, and that the marshal advertise said property so that the sale shall not take place before said date.

Bill of Exceptions.

Circuit Court of the United States for the Western District of the State of Texas. October Term, 1881. In Equity.

Z. KING and J. A. KING, Plaintiffs,
against
THE HELENA BRIDGE COMPANY and Others, Defendants. } No. 3.

91 Now comes the defendant McLane, for himself and in behalf of the Helena Bridge Co., in the foregoing-entitled cause and files this its bill of exceptions, to wit:

The said cause coming on to be heard in its order on the equity docket at the general term of the circuit court of the United States for the western district of the State of Texas, begun and held at the court-house in the city of San Antonio, in said State, on the first Tuesday of October, 1881—present and presiding the Hon. E. B. Turner, district judge, presiding as circuit judge—and it having been agreed by counsel for the respective parties, in open court, that all demurrers and motions then pending should be waived, and that the parties go to trial on the merits of the case, complainants' solicitor then proceeded to offer proofs to sustain the allegations of the bill of complaint.

Whereupon counsel for the defendants objected to the introduction of any testimony on the part of the plaintiffs on the ground that it appears from the pleadings and records in the cause that the court has no jurisdiction of the subject-matter of the suit, because it appears from said bill of complaint and the answer of the defendant, S. A. Oliver, that he was the agent of the plaintiffs for
92 the purpose of bringing this suit, and that he refused to sell as trustee under the trust deed mentioned in said bill as such agent on behalf of the plaintiffs for the purpose of giving this

court jurisdiction, when otherwise the plaintiffs had an adequate remedy under the said trust deed or at law.

The question sought to be raised by this bill is the jurisdiction of the court, which objection the court overruled; to which ruling the defendants' counsel duly excepted.

To which rulings of the court the counsel for the defendant excepted, and prays that this bill may be signed and sealed and made of record in this cause, which is accordingly done.

Nov. 10th, 1881.

E. B. TURNER,
U. S. Judge.

Endorsed: No. 3. Z. King & Co. *vs.* Helena Bridge Co. Bill of exceptions. Filed Nov. 10, 1881. W. C. Robards, clerk.

Appeal.

In the Circuit Court of the United States for [the] Western District of Texas, at San Antonio. In Chancery.

Z. KING & SON
vs.
THE HELENA BRIDGE CO. and SAMUEL A. OLIVER. } No. 3.

93 To the judges of the Supreme Court:

The above-named defendant, The Helena Bridge Company, conceiving itself aggrived by the final decree entered on the 12th day of October, A. D. 1881, in the above-entitled cause, doth hereby appeal therefrom to the Supreme Court of the United States, and prays that this its appeal be allowed, and that a transcript of the record, proceedings, &c., in the cause duly authenticated may be sent to the Supreme Court.

RUSSELL HOWARD,
DIGGES & AUBREY,
Solicitors for Defendant.

Appeal allowed and security fixed at five hundred dollars this 11th day of August, A. D. 1883.

E. B. TURNER,
District Judge Western District of Texas.

Endorsed: No. 3. Z. King & Son *vs.* The Helena Bridge C. and Samuel A. Oliver. Appeal. Filed Aug. 18, '83.

W. C. ROBARDS, *Clerk,*
By N. H. KIRKLAND, *Dep'y.*

Citation.

By the Honorable E. B. Turner, one of the — circuit court of the United States for the western district of Texas, at San Antonio.

94 To Z. King & Son, or Messrs. John Ireland and William H. Burges, their solicitors of record, Greeting:

Whereas the Helena Bridge Company has lately appealed to the

Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the western district of Texas, at San Antonio, made in favor of you, the said Z. King & Son, and has filed the security required by law:

You are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the 8th day of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Austin, in the western district of Texas, in the fifth circuit, the 17th day of August, in the year of our Lord one thousand eight hundred and eighty-three.

E. B. TURNER,
District Judge in and for the Western District of Texas.

Western District of Texas, at San Antonio.

Z. KING & SON
vs.
THE HELENA BRIDGE CO. & SAMUEL A. OLIVER. } No. 3.

95 Hal. L. Gosling, U. S. marshal W. D. Texas, being duly sworn, saith that on the 20th day of August, A. D. 1883, at Austin, Texas, he served on the above-named John Ireland, solicitor of record of said appellee, Z. King & Son, a copy of the appeal and a copy of the citation filed in this cause with the clerk of the circuit court in and for the western district of Texas, at San Antonio, by delivering said copy of the citation to the said John Ireland personally, and by leaving said copy of the appeal for the said appellee and his said counsel in the clerk's office of the circuit court aforesaid.

HAL. L. GOSLING,
U. S. Marshal.

Sworn to this 21st day of August, A. D. 1883, before me.

W. C. ROBARDS, *Clerk*,
By N. H. KIRKLAND, *Dep'y.*

Endorsed: No. 3. Z. King & Son *vs.* The Helena Bridge Co. and Samuel A. Oliver. Citation. Filed Aug. 18, '83. W. C. Robards, clerk, by N. H. Kirkland, dep'y.

Bond for an Appeal in Case No. 3, in Chancery, in the — Court of the United States for the Western District of Texas, at San Antonio.

In the Supreme Court of the United States.

Z. KING & SON
vs.
THE HELENA BRIDGE COMPANY & SAMUEL A. OLIVER.

96 Know all men by these presents that we, The Helena Bridge Company, H. H. McLane, and Geo. Dulling, the last named of whom are citizens and residents of the county of Bexar, State of Texas, are held and firmly bound to Z. King and James

King, who compose the firm known as Z. King & Son, the plaintiffs in the above-entitled cause, in the full and just sum of five hundred dollars, to be paid to them, their executors or administrators, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seal and dated this 16th day of August, A. D. 1883.

Whereas the above-named defendant, the Helena Bridge Company, by Hiram H. McLane, has taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled cause by the circuit court of the United States for the western district of Texas, at San Antonio: Now, therefore, the condition of this obligation is such that if the above-named Helena Bridge Company, by him, the above-named Hiram H. McLane,
97 shall prosecute the said appeal to effect and answer all costs if they shall fail therein, then this obligation shall be void and of no effect otherwise; to remain in full force and virtue.

THE HELENA BRIDGE CO. [SEAL.]
HIRAM H. McLANE. [SEAL.]
GEO. DULLING. [SEAL.]

Signed, sealed, and delivered in presence of—
C. H. FLORIAN.
I. W. RICHARDSON.

UNITED STATES OF AMERICA, } ss:
Western District of Texas, }

Hiram H. McLane & George Dulling, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of five hundred dollars over and above his just debts and liabilities.

GEO. DULLING.
H. H. McLANE.

Sworn to before me this 16th day of August, A. D. 1883.
[L. S.] W. C. ROBARDS,
Clerk U. S. Circuit C't.

I approve the above bond and the sufficiency of the sureties thereto.

E. B. TURNER,
District Judge of the Western District of Texas.

Endorsed. No. 3. Z. King & Son *vs.* The Helena Bridge Co. and Samuel A. Oliver. Bond. Filed Aug. 18, '83. W. C. Robards, cl'k, by N. H. Kirkland, dep'y.

98 No. 3.

In the Circuit Court of the United States for the Western District of Texas, at San Antonio.

I, W. C Robards, clerk of the circuit court of the United States for the western district of Texas, at San Antonio, do hereby certify

that the foregoing and attached ninety-seven (97) pages of manuscript, numbered in the margin of said pages from one (1) to ninety-seven (97), both inclusive, contain a full, true, and correct copy and transcript of the original record and of all proceedings had and determined in the case of Z. King & Son *vs.* The Helena Bridge Company and S. A. Oliver, as appears from the records of said court now in my office, except the depositions and Exhibits "A," "B," "C," "D," "E," "F," "G," & H thereto, five promissory notes, and deed of trust executed by the Helena Bridge Company to Thomas Ruckman, the same being omitted at the instance of counsel for the appellant, who claims that the rule of the said circuit court promulgated May 28th, 1880, was not complied with in the trial of said cause, and hence the said depositions, exhibits, promissory
99 notes, and deed of trust cannot be included in the transcript of the record in said cause.

A true copy of said rule accompanies said transcript.

In testimony whereof I have hereunto set my hand and affixed the seal of the circuit court of the United States of America for the western district of Texas, at San Antonio, at my office, in said city of San Antonio, this 14th day of September, A. D. 1883.

[Seal of the U. S. Circuit Court, Western Dist. Texas, San Antonio.]

W. C. ROBARDS,
Clerk of the U. S. Circuit Court, W. D. T., at San Antonio.

Endorsed on cover: W. Texas C. C. U. S. No. 397. The Helena Bridge Company, appellant, *vs.* Z. King & Son. Filed 11th October, 1883.

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 140.

THE HELENA BRIDGE COMPANY, APPELLANT,

vs.

Z. KING AND SON.

Appeal from the Circuit Court of the United States for the Western District of Texas.

BRIEF FOR APPELLANT.

M. F. MORRIS,
Of Counsel for Appellant.

JUDD & DETWEILER, Printers.

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 140.

THE HELENA BRIDGE COMPANY, APPELLANT,

vs.

Z. KING AND SON.

Appeal from the Circuit Court of the United States for the Western District of Texas.

BRIEF FOR APPELLANT.

I.

STATEMENT OF THE CASE.

This is a suit in equity to foreclose the mortgage, and the defense is that the mortgage was given without consideration, and was an unauthorized and invalid act.

The appellant, the defendant below and the alleged mortgagor, is a body corporate, organized under a General Incorporation Act of the State of Texas, for the purpose of constructing, operating, and maintaining a bridge across the San Antonio river, near Helena, in the county of Karnes, in that State. It was organized with a board of five directors,

Thomas Ruckman, who became president, E. K. Bailey, who became secretary, John Ruckman, who became treasurer, L. W. Burris, and H. H. McLane. (See Certificate of Incorporation, Record, p. 25.)

The company contracted with the appellees, Z. King and Son, who were the complainants in the court below, to construct for it the desired bridge for the sum of $21,000; of which sum $5,000 were to be paid in cash on the day of the delivery of the iron material of the bridge at Helena, $6,000 on the completion of the bridge, and $10,000 in paid up stock of the company. (Record, p. 20.)

This contract was made on September 13, 1875.

The site of the bridge adjourned the lands belonging to McLane, one of the directors of the company; and the right of way over his lands and such portions of the land as were needed for the abutments of the bridge were secured from him in consideration of the sum of $1,000.

When the first payment of $5,000 on the bridge became due, King and Son undertook to collect the subscriptions to the stock of the company; and they did in fact collect them, or at least a large part of them, and with these collections paid themselves. Among others they settled with McLane, whose subscription was for $2,000 worth of the stock; and to whom, in consideration of the payment of $1,000 in cash and the grant of the right of way and of the land for the abutments, estimated to be worth $1,000, they guaranteed the issue of shares of stock of the company of the par value of $2,000. (Rec., p. 16, 21.)

This settlement between King and Son and McLane occurred on March 2, 1876. Four days afterward on March 6, 1876, King and Son entered into a peculiar agreement with Thomas Ruckman—who, if will be remembered, was at the time president of the Bridge Company—by which Ruckman agreed to pay all the expenses of constructing the bridge, to have $1,000 worth of stock issued to McLane; and, in consideration of so doing, he was to receive the

$10,000 worth of stock which King and Son were to have as part payment for building the bridge. (Record, p. 24.)

Simultaneously with this arrangement between King and Son, on the one hand, and Thomas Ruckman, on the other, the two Ruckmans and Bailey, in collusion with King and Son, but pretending to act for the Helena Bridge Company, executed five promissory notes, each for $1,400, payable in 12, 15, 18, 21, and 24 months respectively, with interest at ten per cent. per annum, drawn in the name of the company to the order of Thomas Ruckman, and delivered them to King and Son. And at the same time to secure the notes, they executed and delivered to King and Son a deed of trust, in the name of the company as grantor, to one Oliver the agent of King and Son, on the bridge and its abutments, the sole property of the company. (Record, p. 17.)

These are the notes involved in the present suit, and the deed of trust which, as a mortgage, it is sought to foreclose, the jurisdiction of the court being invoked on the pretence that Oliver, who is made co-defendant with the Bridge Company, has refused to execute the trust, although, as the agent of King and Son, he swears to their bill of complaint for foreclosure. (Record, p. 38.)

The bridge was not then built. In fact, it had only just been commenced; and it has not been finished to this day. Nor has it ever been delivered to the company, or accepted by it. No money was then due to King and Son under their contract. They had been paid the $5,000 due as the first instalment under the contract, and no other instalment ever became due. *There was no legal meeting of the board of directors of the company on the 6th day of March,* 1876. *No notice of any such meeting had been given to McLane and Burris,* two of the directors entitled to participate in it. James A. King, of the firm of King and Son, and Oliver, their agent, were both present at the meeting; and both knew that the meeting was irregular and without authority to act for the company, inasmuch as no notice of it had been given to the

two directors named. As already stated, the bridge was then only just begun; and what there was of it was not built according to the contract. All these facts appear from the answer of the company and the exhibits annexed to it, which constitute the only evidence in the Record. (Rec., p. 15 to 27.)

When the notes became due they were not paid. Oliver refused to execute the deed of trust, as the company in its answer by McLane alleges, in order to give the court jurisdiction. (Record, p. 38.)

Thereupon King and Son, who remained the holders of the notes, brought this suit against the Bridge Company and Oliver to foreclose the deed of trust as a mortgage. Oliver, of course, answered formally, admitting the facts stated in the bill of complaint to be true. The company answered by McLane, and set forth the facts that have just been recited.

Issue was joined, and depositions seem to have been taken in the case. At least, from the decree of the court (Record, p. 30) and from the certificate of the clerk, transmitting the Record (Rec., p. 42), it would seem that depositions were taken. But they do not appear in this record, because they were not made part of the record. A rule of the circuit court promulgated on May 28, 1880, provided as follows:

"On the final hearing of a cause in equity, the counsel of the complainant shall offer his evidence, naming the witnesses and specifying the other evidence (of which the clerk of the court must make note). Then the counsel for defendant shall offer his evidence, which also must be noted by the clerk, and such note of the evidence shall be entered on the minutes of the court.

"Any testimony not offered and noted by the clerk shall not be considered as part of the record, nor considered by the court, and in case of appeal shall not be included in the transcript of the record."

There is nothing in this record to show that any depositions were ever offered in evidence, or that any note of them was entered on the minutes of the court. Certainly if they had been so offered, it is presumed that there would have been some note of the fact in this record.

There are, therefore, no depositions in the case; and the case stands here on bill and answer.

The court below adjudged the sum of $10,919 to be due to the complainants, King and Son, and rendered a decree for the foreclosure of the bridge property and its appurtenances. It also adjudged interest on the amount found due at the rate of ten per centum per annum from the date of the decree. (Record, p. 31.)

From this decree the Bridge Company appeals.

II.

ASSIGNMENT OF ERRORS.

1. The court below erred in finding that the complainants were entitled to any sum whatever from the Bridge Company.

2. The court below erred in allowing interest on the judgment at the rate of ten per centum per annum.

3. The circuit court erred in not holding that the notes and deed of trust in suit were executed and delivered without authority from the defendant company.

4. The circuit court erred in not holding that the notes and deed of trust in suit were null and void.

5. The circuit court erred in not holding that the notes and deed of trust in suit were without consideration.

6. The circuit court erred in decreeing foreclosure of the alleged mortgaged property.

7. The circuit court erred in exercising jurisdiction of the case.

III.

BRIEF OF ARGUMENT.

There is no testimony whatever in the record. The reference in the decree to "*depositions*" and "*proofs*" is of no consequence. We have nothing to show what those "proofs" and "depositions" were, if they ever existed; and it is apparent, from the clerk's certificate (Record, p. 42), that, if there were any proper "proofs" and "depositions," they were not entitled to be considered in the record, because they were not offered in evidence according to the rule of the court. There has been no suggestion of a diminution of the record, and there has been no application for any writ of certiorari to bring up any part of the record that might have been omitted. Consequently we are justified in presuming that the whole record is here before the court.

Nothing is to be presumed from the recital of "proofs" and "depositions" in the decree, especially as the decree does not recite the purport of such "proofs" and "depositions"; and it is this very decree that is in controversy in this Court. For this is not a collateral proceeding, in which the recitals of the decree could not be controverted. The decree here goes absolutely for nothing. It is this decree which is before the court for review; and it is not evidence in any manner whatever in support of its own conclusions. the case, therefore, is to be heard on bill and answer, there being absolutely nothing else in the record.

Now the bill sets forth the execution of the notes and mortgage; that they were given "for the purpose of secur-

ing the payment of the final sum agreed to be paid for the bridge" (Record, p 7); that the bridge had been built to the entire satisfaction of the Company, and had been received by it; and that the notes and mortgage had become due and remained unpaid. The answer denied specifically each and every allegation of the bill. It shows that the bridge was not completed at the time of the execution of the notes and mortgage, and that it has never been completed to this day; that it has never been accepted by the Company; that the part which has been built was not built according to the contract; that no money whatever was due from the company to King and Son at the time of the execution of the notes and mortgage, or has ever since become due to them under their contract; that the notes and mortgage were executed by Ruckman, in pursuance of a fraudulent combination with King and Son, without authority from the company, and without consideration for them moving to the company; that the pretended meeting of directors of the company, at which it is claimed they were executed or authorized, was an illegal meeting, inasmuch as no notice of it had been given to the two directors, Burris and McLane; that King and Son were present at that meeting and were fully cognizant of such illegality; and that, therefore, the whole proceedings were null and void, and a fraud on the rights of the company, and on the rights of its stockholders principally affected. These are the sworn statements of the answer, unassailed and uncontradicted by anything that appears in the record. The complainants, therefore, have absolutely no equity to sustain their bill.

The bill states that the notes and mortgage were executed and delivered to King and Son "after the completion of said bridge and its reception by said Helena Bridge Company," (Record p. 6.) The notes mortgage were executed and delivered on March 6, 1876, (Record p. 17.) On that very same day, King and Son entered into the fraudulent contract with Ruckman, of which mention has been made

from which it conclusively appears that the bridge was *not* then completed, but as claimed only "nearly completed," and in pursuance of which Ruckman himself was to finish the bridge. This contract furnishes conclusive proof of the fraud involved in the transaction. (Record p. 24.)

2.

The jugglery by which the contract price of $6,000 (Record p. 20.) is finally raised, through various gradations, to the sum of $10,919 in the decree, with interest upon that sum from the date of the decree (October 12, 1881,) at the rate of ten per centum per annum, deserves at least a passing consideration.

The contract for building the bridge bears date on Sept. 13, 1875. The contract price of $6000 was to be paid on the completion of the bridge, which was agreed to be on January 1, 1876, (Record p. 20.) The bridge was not completed as we have seen, even on March 6, 1876, the date of the execution and delivery of the notes and mortgage. But, supposing it to have been completed on that day, there was the sum of $6,000 then due, and not the sum of $7,000, the amount of the notes. These notes for $7,000, with interest at 10 per centum, were given March 6, 1876. Three years afterwards (March 3, 1879,) when this suit was brought (Rec. p. 3,) the principal ($7,000) and interest at ten per cent. had amounted to $9,041, as claimed in the bill. Then at the date of the decree (Oct. 12, 1881), the principal and interest at ten per cent. having swelled in the mean time to $10,919 interest, is directed to be compounded on this sum at the rate of 10 per centum per annum.

3.

It is evident that there was no money due from the Bridge Company to King and Son at the time of the execution of the notes and mortgage in suit; that at the utmost

only $6,000, and not $7,000, could have been due; that the notes and mortgages were without consideration; that they were not the act of the Bridge Company, no legal meeting having ever been called to execute them, and that all the equity of the bill of complaint is overcome by the answer.

It is respectfully submitted, therefore, that the bill of complaint should have been dismissed, and that the decree of the circuit court ordering a foreclosure is erroneous, and should be reversed.

M. F. Morris,
Of Counsel for Appellant.

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 140. In Equity.

HELENA BRIDGE CO., APPELLANT,

vs.

Z. KING & SON.

Appeal from the Circuit Court of the United States for the Western District of Texas.

BRIEF OF APPELLEE.

A. G. RIDDLE,
H. E. DAVIS,
J. E. PADGETT,
For King & Son.

JUDD & DETWEILER, Printers.

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 140. In Equity.

HELENA BRIDGE CO., APPELLANT,

vs.

Z. KING & SON.

Appeal from the Circuit Court of the United States for the Western District of Texas.

BRIEF OF APPELLEE.

THE CASE AND RECORD.

In the court below, by their bill, King and Son made it to appear that the Bridge Co., a body corporate, was indebted to them in the sum of near $10,000, by five several promissory notes, duly executed, in payment for its bridge, which said notes were secured by a deed of trust on said structure, franchises, &c.; the notes over due and remaining unpaid they prayed for a sale and application of proceeds. Exhibits were filed with said bill.

The Bridge Co., by answer, set up various defenses. Denied that it remained a corporation; that its bridge was

ever completed; that it was indebted. Alleged that said notes and deed of trust were fraudulently executed.

There were various demurrers, motions, and counter-motions also.

Depositions were taken by the appellees; and the case finally was heard on its merits October 12, 1881. (See Record, p. 30.)

On hearing, the court found there was then due King and Son from the Bridge Co. the sum of $10,919, principal and interest, and decreed a sale of the bridge, and payment.

From this decree the Bridge Company, at the last moment, appealed, executed its bond, and what purports to be a transcript of the record was filed in this court October 11, 1883. The full two years had elapsed.

POINTS MADE.

On inspection, the record does not contain the appellees exhibits, the notes and deed of trust, nor his depositions used in the hearing and upon which the finding and decree of the court were based. See Record, and especially pp. 30 and 41, for recitals and clerk's certificate.

On reference to clerk's certificate it appears that the exhibits, notes, deed of trust, and depositions of the appellees, were withheld from the transcript by the direction of the appellant's counsel, in violation of sec. 698, Rev. Stats. U. S., and Rule 8th of this Court. Nor has the deficiency been supplied in this court.

Error must be shown; will not be presumed.

Russell *vs.* Ely, 2 Black, 575.

Ship Potomac, *Id.*, 58.

Kearney *vs.* Denn, 15 Wall., 51.

As shown, the court below sets forth its finding of fact and the sources of proof, the exhibits and depositions. This, in the condition of the record, must be conclusive here.

By its own action the appellant has deprived itself of the power to attempt an impeachment of this finding and decree.

Under its rules this Court cannot hear, will not pass upon, this half record as a complete transcript.

Under its decisions it will not presume error in the court below.

It is submitted that the decree must be affirmed.

Respectfully,

A. G. RIDDLE,
H. E. DAVIS,
J. E. PADGETT,
For King & Son.

122-634

122—634

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 140.

THE HELENA BRIDGE COMPANY, APPELLANT,

vs.

Z. KING & SON.

Appeal from the Circuit Court of the United States for the Western District of Texas.

MOTION OF APPELLANT TO RECALL MANDATE, REINSTATE CAUSE, AND FOR LEAVE TO SUPPLY FULL RECORD.

The Helena Bridge Company, the appellant, by its attorney, M. F. Morris, comes and moves the Court to recall the mandate issued in this cause, to reinstate the cause on the docket of the Court, and for leave to supply such part of the record as was not sent up with the appeal.

For grounds of this motion the said appellant respectfully shows as follows:

This cause was not heard by the Court upon its merits. When it was called for argument last January it was made

apparent that the depositions which had been taken in the cause had not been included in the transcript of record; and thereupon, by reason of the imperfection of the record and without argument on the merits, the Court affirmed the decree of the circuit court.

Subsequently, upon motion of one of the attorneys for the appellees, who acted in ignorance of an agreement on the subject between the attorney of the appellant and the attorney of the appellees, who had appeared for the argument of the cause, the mandate of this Court was improvidently issued without notice to the appellant or its attorney that it would be applied for; nor was it a cause where the mandate could have issued under the general order of the Court promulgated before the February recess; and the circumstances being made known to the attorneys for the appellees, they have directed that the mandate should not be used, and the appellant understands that it is yet held subject to the result of this present motion.

The clerk of the circuit court failed to send up the depositions taken in the cause in consequence of a rule established for said circuit court by his honor Mr. Justice Bradley, while holding that circuit in the year 1880, and which rule was printed in full in the brief filed for the appellant in this Court. Said rule provided as follows:

"On the final hearing of a cause in equity the counsel of the complainant shall offer his evidence, naming the witnesses and specifying the other evidence (of which the clerk of the court must make note). Then the counsel for defendant shall offer his evidence, which also must be noted by the clerk, and such note of the evidence shall be entered on the minutes of the court. Any testimony not offered and noted by the clerk shall not be considered as part of the record, nor considered by the court, *and in case of appeal shall not be included in the transcript of the record.*"

The attorney for the appellant in the court below, when the clerk was making up the transcript of record in this

cause, called his attention to this rule and suggested that the depositions taken in the cause had never been offered in evidence and noted by the clerk, as required by said rule, and that, therefore, they should not be included in the transcript. The clerk agreed with said attorney, and therefore omitted said depositions from the transcript. And said rule has always, and in many other cases, been similarly applied by said clerk and has been regarded and acted upon by said circuit court as a valid and proper rule.

The said attorney for the appellant in the court below acted in good faith in the premises and sought merely to comply with what he understood to be the order of said circuit court and of this Court in the premises, and he and the agents and officers of the appellant were greatly surprised to learn that said rule was repudiated by this Court and that they were in fault in seeking to comply with its provisions.

The officers and agents of the appellant believe that the appellant has a good and valid defense in the premises against the claim of the appellee, and that, upon a consideration of the cause upon its merits, and upon the answer of the appellant and the aforesaid depositions, it will be made to appear that the appellee has no just and valid claim and that the decree of the circuit court was erroneous and ought to be reversed.

Through a series of misfortunes and illness of some of the persons interested, the appellant has been unable to procure the filing of this motion before the present time.

The appellant, therefore, prays that it be allowed to supply and send up a full transcript of the record in this cause; that the mandate be recalled, and that the cause be reheard on its merits. And the appellant is willing to submit to any terms that the Court may think proper in the premises to expedite the cause.

M. F. Morris,
Of Counsel for Appellant.

M. F. Morris, being duly sworn, deposes and says that, to the best of his knowledge, information, and belief, the facts set forth in the foregoing statement as true.

M. F. Morris,

Subscribed and sworn to before me this 12th day of April, A. D. 1887.

M. J. Colbert,
U. S. Commissioner.

A. G. Riddle, Esq., :
and :
H. E. Davis, Esq., :

Please take notice that the foregoing motion will be submitted to the Court on Monday next, the 18th instant, at the opening of the Court, or as soon thereafter as may be.

M. F. Morris,
for Appellant.